# Attorneys AFF – March/April 2017

## 1AC

### Framework

#### The role of the ballot is to compare the simulated consequences of the affirmative policy vs the negative to best combat oppression.

#### Governments have an obligation to reject forms of structural oppression—it prevents voices from being heard and comes first under any framework.

WINTER AND LEIGHTON – D. D. Winter and Dana Leighton. “STRUCTURAL VIOLENCE SECTION INTRODUCTION”. 6/1/99 http://sites.saumag.edu/danaleighton/wp-content/uploads/sites/11/2015/09/SVintro-2.pdf

“Finally, to recognize the operation of structural violence forces us to ask questions about how and why we tolerate it, questions which often have painful answers for the privileged elite who unconsciously support it. A final question of this section is how and why we allow ourselves to be so oblivious to structural violence. Susan Opotow offers an intriguing set of answers, in her article Social Injustice. She argues that our normal perceptual/cognitive processes divide people into in-groups and out-groups. Those outside our group lie outside our scope of justice. Injustice that would be instantaneously confronted if it occurred to someone we love or know is barely noticed if it occurs to strangers or those who are invisible or irrelevant. We do not seem to be able to open our minds and our hearts to everyone, so **we draw conceptual lines between those who are in and out of our moral circle.** **Those who fall outside are morally excluded, and become either invisible, or demeaned in some way so that we do not have to acknowledge the injustice they suffer.** **Moral exclusion is a human failing**, but Opotow argues convincingly that it is an outcome of everyday social cognition. To reduce its nefarious effects, we must be vigilant in noticing and listening to oppressed, invisible, outsiders. Inclusionary thinking can be fostered by relationships, communication, and appreciation of diversity. Like Opotow, all the authors in this section point out that **structural violence is** not in**evitable if we become aware of its operation, and build systematic ways to mitigate its effects**. Learning about structural violence may be discouraging, overwhelming, or maddening, but these papers encourage us to step beyond guilt and anger, and begin to think about how to reduce structural violence. “

#### States have no act-omission distinction which means they are responsible for the state of affairs they bring about, so constraint based theories collapse to util.

Sunstein and Vermule 05 (Cass Sunstein and Adrian Vermuele, “Is Capital Punishment Morally Required? The Relevance of Life-Life Tradeoffs,” Chicago Public Law & Legal Theory Working Paper No. 85 (March 2005), p. 17.)

In our view, both the argument from causation and the argument from intention go wrong by overlooking the distinctive features of government as a moral agent. Whatever the general status of the act-omission distinction as a matter of moral philosophy,38 the distinction is least impressive when applied to government.39 The most fundamental point is that unlike individuals, governments always and necessarily face a choice between or among possible policies for regulating third parties.The distinction between acts and omissions may not be intelligible in this context, and even if it is, the distinction does not make a morally relevant difference. Most generally, government is in the business of creating permissions and prohibitions. When it explicitly or implicitly authorizes private action, it is not omitting to do anything, or refusing to act.40 Moreover, the distinction between authorized and unauthorized private action—for example, private killing—becomes obscure when the government formally forbids private action, but chooses a set of policy instruments that do not adequately or fully discourage it. **If there is no act-omission distinction, then government is fully complicit with any harm it allows, so decisions are moral if they minimize harm. All means based and side constraint theories collapse because two violations require aggregation.**

#### Oppression is created by social systems so only a focus on material conditions can solve.

Johnson no date Allan Johnson (PhD in sociology, he joined the sociology department at Wesleyan University)  http://www.cabrillo.edu/~lroberts/AlanJohnsonWhatCanWeDO001.pdf

Privilege is a feature of social systems, not individuals. People have or don't have privilege depending on the system they're in and the social categories other people put them in. To say, then, that I have race privilege says less about me personally than it does about the society we all live in and how it is organized to assign privilege on the basis of a socially defined set of racial categories that change historically and often overlap. The challenge facing me as an individual has more to do with how I participate in society as a recipient of race privilege and how those choices oppose or support the system itself. In dealing with the problem of privilege, we have to get used to being surrounded by paradox. Very often those who have privilege don't know it, for example, which is a key aspect of privilege. Also paradoxical is the fact that privilege doesn't necessarily lead to a "good life," which can prompt people in privileged groups to deny resentfully that they even have it. But privilege doesn't equate with being happy. It involves having what others don't have and the struggle to hang on to it at their expense, neither of which is a recipe for joy, personal fulfillment, or spiritual contentment.... To be an effective part of the solution, we have to realize that privilege and oppression are not a thing of the past. It's [is] happening right now. It isn't just a collection of wounds inflicted long ago that now need to be healed. The wounding goes on as I write these words and as you read them, and unless people work to change the system that promotes it, personal healing by itself cannot be the answer. Healing wounds is no more a solution to the oppression that causes the wounding than military hospitals are a solution to war. Healing is a necessary process, but it isn't enough.... Since privilege is rooted primarily in systems—such as families, schools, and workplaces—change isn't simply a matter of changing people. People, of course, will have to change in order for systems to change, but the most important point is that changing people isn't enough. The solution also has to include entire systems, such as capitalism, whose paths of least resistance shape how we feel, think, and behave as individuals, how we see ourselves and one another.

#### Use particularism- root cause claims and focus on overarching structures ignore application to material injustice.

Gregory Fernando Pappas 16 [Texas A&M University] “The Pragmatists’ Approach to Injustice”, The Pluralist Volume 11, Number 1, Spring 2016,

The pragmatists’ approach should be distinguished from nonideal theories whose starting point seems to be the injustices of society at large that have a history and persist through time, where the task of political philosophy is to detect and diagnose the presence of these historical injustices in particular situations of injustice. For example, critical theory today has inherited an approach to social philosophy characteristic of the European tradition that goes back to Rousseau, Marx, Weber, Freud, Marcuse, and others. Accord- ing to Roberto Frega, this tradition takes society to be “intrinsically sick” with a malaise that requires adopting a critical historical stance in order to understand how the systematic sickness affects present social situations. In other words, this approach assumes that¶ a philosophical critique of specific social situations can be accomplished only under the assumption of a broader and full blown critique of soci- ety in its entirety: as a critique of capitalism, of modernity, of western civilization, of rationality itself. The idea of social pathology becomes intelligible only against the background of a philosophy of history or of an anthropology of decline, according to which the distortions of actual social life are but the inevitable consequence of longstanding historical processes. (“Between Pragmatism and Critical Theory” 63)¶ However, this particular approach to injustice is not limited to critical theory. It is present in those Latin American and African American political philosophies that have used and transformed the critical intellectual tools of ¶ critical theory to deal with the problems of injustice in the Americas. For instance, Charles W. Mills claims that the starting point and alternative to the abstractions of ideal theory that masked injustices is to diagnose and rectify a history of an illness—the legacy of white supremacy in our actual society.11 The critical task of revealing this illness is achieved by adopting a historical perspective where the injustices of today are part of a larger historical narrative about the development of modern societies that goes back to how Europeans have progressively dehumanized or subordinated others. Similary, radical feminists as well as Third World scholars, as reaction to the hege- monic Eurocentric paradigms that disguise injustices under the assumption of a universal or objective point of view, have stressed how our knowledge is always situated. This may seem congenial with pragmatism except the locus of the knower and of injustices is often described as power structures located in “global hierarchies” and a “world-system” and not situations.12¶ Pragmatism only questions that we live in History or a “World-System” (as a totality or abstract context) but not that we are in history (lowercase): in a present situation continuous with others where the past weighs heavily in our memories, bodies, habits, structures, and communities. It also does not deny the importance of power structures and seeing the connections be- tween injustices through time, but there is a difference between (a) inquiring into present situations of injustice in order to detect, diagnose, and cure an injustice (a social pathology) across history, and (b) inquiring into the his- tory of a systematic injustice in order to facilitate inquiry into the present unique, context-bound injustice. To capture the legacy of the past on present injustices, we must study history but also seek present evidence of the weight of the past on the present injustice.¶ If injustice is an illness, then the pragmatists’ approach takes as its main focus diagnosing and treating the particular present illness, that is, the particular situation-bound injustice and not a global “social pathology” or some single transhistorical source of injustice. The diagnosis of a particular injustice is not always dependent on adopting a broader critical standpoint of society in its entirety, but even when it is, we must be careful to not forget that such standpoints are useful only for understanding the present evil. The concepts and categories “white supremacy” and “colonialism” can be great tools that can be of planetary significance. One could even argue that they pick out much larger areas of people’s lives and injustices than the categories of class and gender, but in spite of their reach and explanatory theoretical value, they are nothing more than tools to make reference to and ameliorate particular injustices experienced (suffered) in the midst of a particular and unique re- lationship in a situation. No doubt many, but not all, problems of injustice are a consequence of being a member of a group in history, but even in these cases, we cannot a priori assume that injustices are homogeneously equal for all members of that group. Why is this important? The possible pluralism and therefore complexity of a problem of injustice does not always stop at the level of being a member of a historical group or even a member of many groups, as insisted on by intersectional analysis. There may be unique cir- cumstances to particular countries, towns, neighborhoods, institutions, and ultimately situations that we must be open to in a context-sensitive inquiry. If an empirical inquiry is committed to capturing and ameliorating all of the harms in situations of injustice in their raw pretheoretical complexity, then this requires that we try to begin with and return to the concrete, particular, and unique experiences of injustice.¶ Pragmatism agrees with Sally Haslanger’s concern about Charles Mills’s view. She writes: “The goal is not just a theory that is historical (v. ahistori- cal), but is sensitive to historical particularity, i.e., that resists grand causal narratives purporting to give an account of how domination has come about and is perpetuated everywhere and at all times” (1). For “the forces that cause and sustain domination vary tremendously context by context, and there isn’t necessarily a single causal explanation; a theoretical framework that is useful as a basis for political intervention must be highly sensitive to the details of the particular social context” (1).13¶ Although each situation is unique, there are commonalities among the cases that permit inquiry about common causes. We can “formulate tentative general principles from investigation of similar individual cases, and then . . . check the generalizations by applying them to still further cases” (Dewey, Lectures in China 53). But Dewey insists that the focus should be on the indi- vidual case, and was critical of how so many sociopolitical theories are prone to starting and remaining at the level of “sweeping generalizations.” He states that they “fail to focus on the concrete problems which arise in experience, allowing such problems to be buried under their sweeping generalizations” (Lectures in China 53).¶ The lesson pragmatism provides for nonideal theory today is that it must be careful to not reify any injustice as some single historical force for which particular injustice problems are its manifestation or evidence for its exis- tence. Pragmatism welcomes the wisdom and resources of nonideal theories that are historically grounded on actual injustices, but it issues a warning about how they should be understood and implemented. It is, for example, sympathetic to the critical resources found in critical race theory, but with an important qualification. It understands Derrick Bell’s valuable criticism as context-specific to patterns in the practice of American law. Through his inquiry into particular cases and civil rights policies at a particular time and place, Bell learned and proposed certain general principles such as the one of “interest convergence,” that is, “whites will promote racial advantages for blacks only when they also promote white self-interest.”14 But, for pragma- tism, these principles are nothing more than historically grounded tools to use in present problematic situations that call for our analysis, such as deliberation in establishing public policies or making sense of some concrete injustice. The principles are falsifiable and open to revision as we face situation-specific injustices. In testing their adequacy, we need to consider their function in making us see aspects of injustices we would not otherwise appreciate.15

#### The aff deploys the state to learn scenario planning- even if politics is bad, scenario analysis of politics is pedagogically valuable- it enhances creativity, deconstructs biases and teaches advocacy skills

Barma et al 16 May 2016, [Advance Publication Online on 11/6/15], Naazneen Barma, PhD in Political Science from UC-Berkeley, Assistant Professor of National Security Affairs at the Naval Postgraduate School, Brent Durbin, PhD in Political Science from UC-Berkeley, Professor of Government at Smith College, Eric Lorber, JD from UPenn and PhD in Political Science from Duke, Gibson, Dunn & Crutcher, Rachel Whitlark, PhD in Political Science from GWU, Post-Doctoral Research Fellow with the Project on Managing the Atom and International Security Program within the Belfer Center for Science and International Affairs at Harvard, “‘Imagine a World in Which’: Using Scenarios in Political Science,” International Studies Perspectives 17 (2), pp. 1-19,

What Are Scenarios and Why Use Them in Political Science? Scenario analysis is perceived most commonly as a technique for examining the robustness of strategy. It can immerse decision makers in future states that go beyond conventional extrapolations of current trends, preparing them to take advantage of unexpected opportunities and to protect themselves from adverse exogenous shocks. The global petroleum company Shell, a pioneer of the technique, characterizes scenario analysis as the art of considering “what if” questions about possible future worlds. Scenario analysis is thus typically seen as serving the purposes of corporate planning or as a policy tool to be used in combination with simulations of decision making. Yet scenario analysis is not inherently limited to these uses. This section provides a brief overview of the practice of scenario analysis and the motivations underpinning its uses. It then makes a case for the utility of the technique for political science scholarship and describes how the scenarios deployed at NEFPC were created. The Art of Scenario Analysis We characterize scenario analysis as the art of juxtaposing current trends in unexpected combinations in order to articulate surprising and yet plausible futures, often referred to as “alternative worlds.” Scenarios are thus explicitly not forecasts or projections based on linear extrapolations of contemporary patterns, and they are not hypothesis-based expert predictions. Nor should they be equated with simulations, which are best characterized as functional representations of real institutions or decision-making processes (Asal 2005). Instead, they are depictions of possible future states of the world, offered together with a narrative of the driving causal forces and potential exogenous shocks that could lead to those futures. Good scenarios thus rely on explicit causal propositions that, independent of one another, are plausible—yet, when combined, suggest surprising and sometimes controversial future worlds. For example, few predicted the dramatic fall in oil prices toward the end of 2014. Yet independent driving forces, such as the shale gas revolution in the United States, China’s slowing economic growth, and declining conflict in major Middle Eastern oil producers such as Libya, were all recognized secular trends that—combined with OPEC’s decision not to take concerted action as prices began to decline—came together in an unexpected way. While scenario analysis played a role in war gaming and strategic planning during the Cold War, the real antecedents of the contemporary practice are found in corporate futures studies of the late 1960s and early 1970s (Raskin et al. 2005). Scenario analysis was essentially initiated at Royal Dutch Shell in 1965, with the realization that the usual forecasting techniques and models were not capturing the rapidly changing environment in which the company operated (Wack 1985; Schwartz 1991). In particular, it had become evident that straight-line extrapolations of past global trends were inadequate for anticipating the evolving business environment. Shell-style scenario planning “helped break the habit, ingrained in most corporate planning, of assuming that the future will look much like the present” (Wilkinson and Kupers 2013, 4). Using scenario thinking, Shell anticipated the possibility of two Arab-induced oil shocks in the 1970s and hence was able to position itself for major disruptions in the global petroleum sector. Building on its corporate roots, scenario analysis has become a standard policymaking tool. For example, the Project on Forward Engagement advocates linking systematic foresight, which it defines as the disciplined analysis of alternative futures, to planning and feedback loops to better equip the United States to meet contemporary governance challenges (Fuerth 2011). Another prominent application of scenario thinking is found in the National Intelligence Council’s series of Global Trends reports, issued every four years to aid policymakers in anticipating and planning for future challenges. These reports present a handful of “alternative worlds” approximately twenty years into the future, carefully constructed on the basis of emerging global trends, risks, and opportunities, and intended to stimulate thinking about geopolitical change and its effects.4 As with corporate scenario analysis, the technique can be used in foreign policymaking for long-range general planning purposes as well as for anticipating and coping with more narrow and immediate challenges. An example of the latter is the German Marshall Fund’s EuroFutures project, which uses four scenarios to map the potential consequences of the Euro-area financial crisis (German Marshall Fund 2013). Several features make scenario analysis particularly useful for policymaking.5 Long-term global trends across a number of different realms—social, technological, environmental, economic, and political—combine in often-unexpected ways to produce unforeseen challenges. Yet the ability of decision makers to imagine, let alone prepare for, discontinuities in the policy realm is constrained by their existing mental models and maps. This limitation is exacerbated by well-known cognitive bias tendencies such as groupthink and confirmation bias (Jervis 1976; Janis 1982; Tetlock 2005). The power of scenarios lies in their ability to help individuals break out of conventional modes of thinking and analysis by introducing unusual combinations of trends and deliberate discontinuities in narratives about the future. Imagining alternative future worlds through a structured analytical process enables policymakers to envision and thereby adapt to something altogether different from the known present. Designing Scenarios for Political Science Inquiry The characteristics of scenario analysis that commend its use to policymakers also make it well suited to helping political scientists generate and develop policy-relevant research programs. Scenarios are essentially textured, plausible, and relevant stories that help us imagine how the future political-economic world could be different from the past in a manner that highlights policy challenges and opportunities. For example, terrorist organizations are a known threat that have captured the attention of the policy community, yet our responses to them tend to be linear and reactive. Scenarios that explore how seemingly unrelated vectors of change—the rise of a new peer competitor in the East that diverts strategic attention, volatile commodity prices that empower and disempower various state and nonstate actors in surprising ways, and the destabilizing effects of climate change or infectious disease pandemics—can be useful for illuminating the nature and limits of the terrorist threat in ways that may be missed by a narrower focus on recognized states and groups. By illuminating the potential strategic significance of specific and yet poorly understood opportunities and threats, scenario analysis helps to identify crucial gaps in our collective understanding of global politicaleconomic trends and dynamics. The notion of “exogeneity”—so prevalent in social science scholarship—applies to models of reality, not to reality itself. Very simply, scenario analysis can throw into sharp relief often-overlooked yet pressing questions in international affairs that demand focused investigation. Scenarios thus offer, in principle, an innovative tool for developing a political science research agenda. In practice, achieving this objective requires careful tailoring of the approach. The specific scenario analysis technique we outline below was designed and refined to provide a structured experiential process for generating problem-based research questions with contemporary international policy relevance.6 The first step in the process of creating the scenario set described here was to identify important causal forces in contemporary global affairs. Consensus was not the goal; on the contrary, some of these causal statements represented competing theories about global change (e.g., a resurgence of the nation-state vs. border-evading globalizing forces). A major principle underpinning the transformation of these causal drivers into possible future worlds was to “simplify, then exaggerate” them, before fleshing out the emerging story with more details.7 Thus, the contours of the future world were drawn first in the scenario, with details about the possible pathways to that point filled in second. It is entirely possible, indeed probable, that some of the causal claims that turned into parts of scenarios were exaggerated so much as to be implausible, and that an unavoidable degree of bias or our own form of groupthink went into construction of the scenarios. One of the great strengths of scenario analysis, however, is that the scenario discussions themselves, as described below, lay bare these especially implausible claims and systematic biases.8 An explicit methodological approach underlies the written scenarios themselves as well as the analytical process around them—that of case-centered, structured, focused comparison, intended especially to shed light on new causal mechanisms (George and Bennett 2005). The use of scenarios is similar to counterfactual analysis in that it modifies certain variables in a given situation in order to analyze the resulting effects (Fearon 1991). Whereas counterfactuals are traditionally retrospective in nature and explore events that did not actually occur in the context of known history, our scenarios are deliberately forward-looking and are designed to explore potential futures that could unfold. As such, counterfactual analysis is especially well suited to identifying how individual events might expand or shift the “funnel of choices” available to political actors and thus lead to different historical outcomes (Nye 2005, 68–69), while forward-looking scenario analysis can better illuminate surprising intersections and sociopolitical dynamics without the perceptual constraints imposed by fine-grained historical knowledge. We see scenarios as a complementary resource for exploring these dynamics in international affairs, rather than as a replacement for counterfactual analysis, historical case studies, or other methodological tools. In the scenario process developed for NEFPC, three distinct scenarios are employed, acting as cases for analytical comparison. Each scenario, as detailed below, includes a set of explicit “driving forces” which represent hypotheses about causal mechanisms worth investigating in evolving international affairs. The scenario analysis process itself employs templates (discussed further below) to serve as a graphical representation of a structured, focused investigation and thereby as the research tool for conducting case-centered comparative analysis (George and Bennett 2005). In essence, these templates articulate key observable implications within the alternative worlds of the scenarios and serve as a framework for capturing the data that emerge (King, Keohane, and Verba 1994). Finally, this structured, focused comparison serves as the basis for the cross-case session emerging from the scenario analysis that leads directly to the articulation of new research agendas. The scenario process described here has thus been carefully designed to offer some guidance to policy-oriented graduate students who are otherwise left to the relatively unstructured norms by which political science dissertation ideas are typically developed. The initial articulation of a dissertation project is generally an idiosyncratic and personal undertaking (Useem 1997; Rothman 2008), whereby students might choose topics based on their coursework, their own previous policy exposure, or the topics studied by their advisors. Research agendas are thus typically developed by looking for “puzzles” in existing research programs (Kuhn 1996). Doctoral students also, understandably, often choose topics that are particularly amenable to garnering research funding. Conventional grant programs typically base their funding priorities on extrapolations from what has been important in the recent past—leading to, for example, the prevalence of Japan and Soviet studies in the mid-1980s or terrorism studies in the 2000s—in the absence of any alternative method for identifying questions of likely future significance. The scenario approach to generating research ideas is grounded in the belief that these traditional approaches can be complemented by identifying questions likely to be of great empirical importance in the real world, even if these do not appear as puzzles in existing research programs or as clear extrapolations from past events. The scenarios analyzed at NEFPC envision alternative worlds that could develop in the medium (five to seven year) term and are designed to tease out issues scholars and policymakers may encounter in the relatively near future so that they can begin thinking critically about them now. This timeframe offers a period distant enough from the present as to avoid falling into current events analysis, but not so far into the future as to seem like science fiction. In imagining the worlds in which these scenarios might come to pass, participants learn strategies for avoiding failures of creativity and for overturning the assumptions that prevent scholars and analysts from anticipating and understanding the pivotal junctures that arise in international affairs.

#### institutions are inevitable and learning to pragmatically engage them best facilitates change

Themba-Nixon 2K – Makani Themba-Nixon, “Changing the Rules: What Public Policy Means for Organizing,” Colorlines. Oakland: Jul 31, 2000. Vol. 3, Iss. 2; pg. 12

In essence, policies are the codification of power relationships and resource allocation. Policies are the rules of the world we live in. Changing the world means changing the rules. So, if organizing is about changing the rules and building power, how can organizing be separated from policies? Can we really speak truth to power, fight the right, stop corporate abuses, or win racial justice without contesting the rules and the rulers, the policies and the policymakers? The answer is no-and double no for people of color. Today, racism subtly dominates nearly every aspect of policymaking. From ballot propositions to city funding priorities, policy is increasingly about the control, de-funding, and disfranchisement of communities of color. What Do We Stand For? Take the public conversation about welfare reform, for example. Most of us know it isn't really about putting people to work. The right's message was framed around racial stereotypes of lazy, cheating "welfare queens" whose poverty was "cultural." But the new welfare policy was about moving billions of dollars in individual cash payments and direct services from welfare recipients to other, more powerful, social actors. Many of us were too busy to tune into the welfare policy drama in Washington, only to find it washed up right on our doorsteps. Our members are suffering from workfare policies, new regulations, and cutoffs. Families who were barely getting by under the old rules are being pushed over the edge by the new policies. Policy doesn't get more relevant than this. And so we got involved in policy-as defense. Yet we have to do more than block their punches. We have to start the fight with initiatives of our own. Those who do are finding offense a bit more fun than defense alone. Living wage ordinances, youth development initiatives, even gun control and alcohol and tobacco policies are finding their way onto the public agenda, thanks to focused community organizing that leverages power for community-driven initiatives. - Over 600 local policies have been passed to regulate the tobacco industry. Local coalitions have taken the lead by writing ordinances that address local problems and organizing broad support for them. - Nearly 100 gun control and violence prevention policies have been enacted since 1991. - Milwaukee, Boston, and Oakland are among the cities that have passed living wage ordinances: local laws that guarantee higher than minimum wages for workers, usually set as the minimum needed to keep a family of four above poverty. These are just a few of the examples that demonstrate how organizing for local policy advocacy has made inroads in areas where positive national policy had been stalled by conservatives. Increasingly, the local policy arena is where the action is and where activists are finding success. Of course, corporate interests-which are usually the target of these policies-are gearing up in defense. Tactics include front groups, economic pressure, and the tried and true: cold, hard cash. Despite these barriers, grassroots organizing can be very effective at the smaller scale of local politics. At the local level, we have greater access to elected officials and officials have a greater reliance on their constituents for reelection. For example, getting 400 people to show up at city hall in just about any city in the U.S. is quite impressive. On the other hand, 400 people at the state house or the Congress would have a less significant impact. Add to that the fact that all 400 people at city hall are usually constituents, and the impact is even greater. Recent trends in government underscore the importance of local policy. Congress has enacted a series of measures devolving significant power to state and local government. Welfare, health care, and the regulation of food and drinking water safety are among the areas where states and localities now have greater rule. Devolution has some negative consequences to be sure. History has taught us that, for social services and civil rights in particular, the lack of clear federal standards and mechanisms for accountability lead to uneven enforcement and even discriminatory implementation of policies. Still, there are real opportunities for advancing progressive initiatives in this more localized environment. Greater local control can mean greater community power to shape and implement important social policies that were heretofore out of reach. To do so will require careful attention to the mechanics of local policymaking and a clear blueprint of what we stand for. Getting It in Writing Much of the work of framing what we stand for takes place in the shaping of demands. By getting into the policy arena in a proactive manner, we can take our demands to the next level. Our demands can become law, with real consequences if the agreement is broken. After all the organizing, press work, and effort, a group should leave a decisionmaker with more than a handshake and his or her word. Of course, this work requires a certain amount of interaction with "the suits," as well as struggles with the bureaucracy, the technical language, and the all-too-common resistance by decisionmakers. Still, if it's worth demanding, it's worth having in writing-whether as law, regulation, or internal policy. From ballot initiatives on rent control to laws requiring worker protections, organizers are leveraging their power into written policies that are making a real difference in their communities. Of course, policy work is just one tool in our organizing arsenal, but it is a tool we simply can't afford to ignore. Making policy work an integral part of organizing will require a certain amount of retrofitting. We will need to develop the capacity to translate our information, data, and experience into stories that are designed to affect the public conversation. Perhaps most important, we will need to move beyond fighting problems and on to framing solutions that bring us closer to our vision of how things should be. And then we must be committed to making it so.

### Advantage

#### In the status quo there’s no right to counsel in civil housing cases.

**Davis 14**, Martha (Professor at Northwestern Law School), Risa Kaufman, and Heidi M. Wegleitner. "The Interdependence of Rights: Protecting the Human Right to Housing by Promoting the Right to Counsel." (2014).

A categorical **right to counsel in civil cases is not recognized under the federal Constitution.** Although the U.S. Supreme Court has found a right to counsel in criminal cases,80 **the Court conducts a stringent case-by-case due process analysis in civil cases to determine whether the Constitution requires the appointment of counsel.81 Indeed,** **the Court has refused to find a categorical right to counsel even in some civil cases where lengthy jail sentences are**, in fact, imposed.

#### Currently, those who sue do not have the right to counsel and many go into court without representation for lawsuits.

**Davis 14**, Martha (Professor at Northwestern Law School), Risa Kaufman, and Heidi M. Wegleitner. "The Interdependence of Rights: Protecting the Human Right to Housing by Promoting the Right to Counsel." (2014).

Although **legal representation is fundamental to safeguarding human rights**, millions of **people in the United States lack representation when facing a crisis such as eviction or foreclosure**. In the United States, only a small fraction of the legal problems experienced by low-income people—**fewer than one in five—are addressed with the assistance of legal representation**.7 State and county level data indicate that a high percentage of defendants—in some places over ninety percent—are unrepresented in proceedings involving foreclosure.8 Similarly, **tenants are overwhelmingly unrepresented in housing courts, in stark comparison to landlords.9**

**Like the right to housing, a categorical right to counsel in civil cases is not recognized under the federal Constitution.10 And federal programs providing civil counsel to people who are poor or low-income are under-funded and severely restricted.**11 The result is a crisis in unmet legal needs which disproportionately harms racial minorities and women, and which seriously jeopardizes the right to housing for millions living in the United States.

#### Lack of counsel primarily harms poor, minorities the most.

**Davis 14**, Martha (Professor at Northwestern Law School), Risa Kaufman, and Heidi M. Wegleitner. "The Interdependence of Rights: Protecting the Human Right to Housing by Promoting the Right to Counsel." (2014).

Moreover, **lack of access to civil counsel disparately impacts** racial **minorities,** women, and other vulnerable groups. Racial **minorities** and **women are overly represented among people who qualify for civil legal assistance**,56 and access to justice studies indicate that such groups make up a disproportionate number of litigants without representation. **In New York City family and housing courts, for example, the vast majority of litigants without representation are racial minorities**.57 Similarly, in Pennsylvania family courts, most low-income litigants, which include a disproportionate number of racial minorities and women, lack representation.58 Further illustrating the intersection of race and gender, a **California study found that about 85% of litigants appearing in family court without an attorney were women, the majority women of color.59 The U.N. Committee on the Elimination of Racial Discrimination recognized this problem when it expressed concerns over the disparate impact that lack of counsel in civil cases has on racial and ethnic minorities in the United States.**

#### Plan: The United States ought to guarantee the right to housing by granting the right to counsel in civil housing cases.

**Davis 14**, Martha (Professor at Northwestern Law School), Risa Kaufman, and Heidi M. Wegleitner. "The Interdependence of Rights: Protecting the Human Right to Housing by Promoting the Right to Counsel." (2014).

Thus, **a rigorous effort to** protect the right to housing **in the United States must** also seek to secure the right to counsel in civil cases. **This is a key insight offered by international human rights law**. **As the U.N. expert on poverty** and human rights recently **noted, “access to justice is a human right in itself**, and essential for tackling the root causes of poverty. . . . Lack of legal aid for civil matters can seriously prejudice the rights and interests of persons living in poverty, for example **when they are unable to contest tenancy disputes [and] eviction decisions**.”12 The U.N. Special Rapporteur on Adequate Housing has written that **legal remedies against forced evictions are only effective where civil legal aid is also provided**.

#### Every empiric flows aff- attorneys are key to success.

**Davis 14**, Martha (Professor at Northwestern Law School), Risa Kaufman, and Heidi M. Wegleitner. "The Interdependence of Rights: Protecting the Human Right to Housing by Promoting the Right to Counsel." (2014).

**Numerous studies have found that legal representation particularly impacts outcomes in housing court**. A study in Maricopa County, Arizona, found that **while approximately 87 percent of landlords were represented in the County Justice Courts, virtually no tenants were** represented, and most eviction cases took less than a minute to be heard by the court—with many heard and considered in less than twenty seconds.45 Unrepresented tenants rarely had their eviction cases dismissed.46 A recent pilot study in Massachusetts found that extensive assistance from lawyers is essential to preserving tenants’ housing in eviction cases,47 confirming earlier findings in a study of summary process evction cases in Massachusetts courts.4 A study of evictions in New Haven, Connecticut, concluded **that tenants represented by legal services lawyers were more than three times more likely to avoid eviction** **than tenants without lawyers.**49 Even where legal services lawyers were unable to defeat their clients’ evictions, they were able to substantially delay the evictions.50 A study of landlord/tenant courts in Washington, D.C., found that approximately 3 percent of tenants who appeared in landlord/tenant court were represented by counsel.51 Of the cases filed in landlord/tenant court, approximately 75 perecent were closed due to dismissals or default judgments in the favor of the landlord.52 Of the remaining 25 perecent, two-thirds were closed by confessions of judgment or consent agreements, notwithstanding tenants’ claims or defenses.53 In contrast, tenants who were represented by counsel rarely entered consent judgments.54 A New York City study found the impact of legal counsel for poor tenants statistically significant: while 28 percent of the tenants in control group cases (without a lawyer) defaulted or failed to appear in housing court, only about 16 percent of those tenants provided with lawyers did, and while 52 percent of control group cases had judgments issued against them, only 32 perecent of tenants provided with lawyers had judgments issued against them.

#### Winning lawsuits can be a massive leg-up for marginalized communities stuck in poverty- between 1990 and 2001 that lead to over 150 million dollars in recovery.

**Wiki n.d.** Housing discrimination (United States), From Wikipedia, the free encyclopedia, https://en.wikipedia.org/wiki/Housing\_discrimination\_(United\_States)

The federal government has passed other initiatives in addition to the[Fair Housing Act of 1968](https://en.wikipedia.org/wiki/Fair_Housing_Act_of_1968). The[Equal Credit Opportunity Act](https://en.wikipedia.org/wiki/Equal_Credit_Opportunity_Act)of 1974 and[Community Reinvestment Act](https://en.wikipedia.org/wiki/Community_Reinvestment_Act)of 1977 helped with discrimination in mortgage lending and lenders' problems with credit needs.[[12]](https://en.wikipedia.org/wiki/Housing_discrimination_(United_States)#cite_note-Justice-12)The Fair Housing Amendments Act of 1988 was passed to give the federal government the power to enforce the original Fair Housing Act to correct past problems with enforcement.[[13]](https://en.wikipedia.org/wiki/Housing_discrimination_(United_States)#cite_note-Yinger.2C_John_2001-13)The amendment established a system of administrative law judges to hear cases brought to them by the[United States Department of Housing and Urban Development](https://en.wikipedia.org/wiki/United_States_Department_of_Housing_and_Urban_Development)and to levy fines.[[14]](https://en.wikipedia.org/wiki/Housing_discrimination_(United_States)#cite_note-14) **Because of the relationship between housing discrimination cases and private agencies, the federal government passed the two initiatives. The Fair Housing Assistance Program of 1984 was passed to assist public agencies with processing complaints, and the Fair Housing Initiatives program of 1986 supported private and public fair housing agencies in their activities, such as auditing.**[**[13]**](https://en.wikipedia.org/wiki/Housing_discrimination_(United_States)#cite_note-Yinger.2C_John_2001-13)**Between 1990 and 2001 these two programs have resulted in over one thousand housing discrimination lawsuits and over $155 million in financial recovery.**[[13]](https://en.wikipedia.org/wiki/Housing_discrimination_(United_States)#cite_note-Yinger.2C_John_2001-13)However, the lawsuits and financial recoveries generated from fair housing discrimination cases only scratches the surface of all instances of discrimination. Silverman and Patterson concluded that the underfunding and poor implementation of federal, state and local policies designed to address housing discrimination results in less than 1% of all instances of discrimination being addressed.[[15]](https://en.wikipedia.org/wiki/Housing_discrimination_(United_States)#cite_note-15)Moreover, they found that local nonprofits and administrators responsible for enforcing fair housing laws had a tendency to downplay discrimination based on family status and race when designing implementation strategies.[[16]](https://en.wikipedia.org/wiki/Housing_discrimination_(United_States)#cite_note-16)

#### The 1AC causes a social change that moves people onto the side of immigrants.

Schultz and Gottlieb 96 (David Schultz, Vice President, Minnesota Civil Liberties Union & Stephen E. Gottlieb, Cleveland-Marshall School of Law, “Legal Functionalism and Social Change: A Reassessment of Rosenberg’s The Hollow Hope: Can Courts Bring About Social Change?” JOURNAL OF LAW AND POLICY v. 12, Winter 1996, p. 63+.)

**Further, since law imposes social costs  n90 and affects incentives,  n91 the decision itself, without extra-judicial assistance, raised new obstacles to segregation.  n92 What once was a nearly costless behavior suddenly entailed increased litigation costs, fines, and injunctions; the threat of executive action against segregation now was increasingly real; and it now was likely that other related behaviors also would be similarly burdened.**

#### Increased legal access is key to empowering oppressed populations.

Arkles et al 10 (Gabriel Arkles, Pooja Gehi and Elana Redfield, The Role of Lawyers in Trans Liberation: Building a Transformative Movement for Social Change, Seattle Journal for Social Justice, 8 Seattle J. Soc. Just. 579, Spring / Summer, 2010)

While agenda-setting by lawyers can lead to the replication of patterns of elitism and the reinforcement of systems of oppression, we do believe that legal work is a necessary and critical way to support movements for social justice. We must recognize the limitations of the legal system and learn to use that to the advantage of the oppressed. If lawyers are going to support work that dismantles oppressive structures, we must radically rethink the roles we can play in building and supporting these movements and acknowledge that our own individual interests or even livelihood may conflict with doing radical and transformative work. n162 A. Community Organizing for Social Justice When we use the term community organizing or organizing, we refer to the activities of organizations engaging in base-building and leadership development of communities directly impacted by one or more social [\*612] problems and conducting direct action issue campaigns intended to make positive change related to the problem(s). In this article, we discuss community organizing in the context of progressive social change, but community-organizing strategies can also be used for conservative ends. Community organizing is a powerful means to make social change. A basic premise of organizing is that inappropriate imbalances of power in society are a central component of social injustice. In order to have social justice, power relationships must shift. In Organizing for Social Change: Midwest Academy Manual for Activists (hereinafter, "the Manual"), n163 the authors list three principles of community organizing: n164 (1) winning real, immediate, concrete improvements in people's lives; (2) giving people a sense of their own power; and (3) altering the relations of power. n165 Before any of these principles can be achieved it is necessary to have leadership by the people impacted by social problems. n166 As Rinku Sen points out: [E]ven allies working in solidarity with affected groups cannot rival the clarity and power of the people who have the most to gain and the least to lose . . . organizations composed of people whose lives will change when a new policy is instituted tend to set goals that are harder to reach, to compromise less, and to stick out a fight longer. n167 She also notes that, "[I]f we are to make policy proposals that are grounded in reality and would make a difference either in peoples' lives or in the debate, then we have to be in touch with the people who are at the center of such policies. n168 We believe community organizing has the potential to make fundamental social change that law reform strategies or "movements" led by lawyers cannot achieve on their own. However, community organizing is not always just and effective. Community-organizing groups are not immune to any number of problems that can impact other organizations, including internal oppressive dynamics. In fact, some strains of white, male-dominated [\*613] community organizing have been widely criticized as perpetuating racism and sexism. n169 Nonetheless, models of community organizing, particularly as revised by women of color and other leaders from marginalized groups, have much greater potential to address fundamental imbalances of power than law reform strategies. They also have a remarkable record of successes. Tools from community organizers can help show where other strategies can fit into a framework for social change. The authors of the Manual, for example, describe various strategies for addressing social issues and illustrate how each of them may, at least to some extent, be effective. n170 They then plot out various forms of making social change on a continuum in terms of their positioning with regard to existing social power relationships. n171 They place direct services at the end of the spectrum that is most accepting of existing power relationships and community organizing at the end of the spectrum that most challenges existing power relationships. n172 Advocacy organizations are listed in the middle, closer to community organizing than direct services. n173 The Four Pillars of Social Justice Infrastructure model, a tool of the Miami Workers Center, is somewhat more nuanced than the Manual. n174 According to this model, four "pillars" are the key to transformative social justice. n175 They are (1) the pillar of service, which addresses community needs and stabilizes community members' lives; (2) the pillar of policy, which changes policies and institutions and achieves concrete gains with benchmarks for progress; (3) the pillar of consciousness, which alters public opinion and shifts political parameters through media advocacy and popular education; and (4) the pillar of power, which achieves autonomous community power through base-building and leadership development. n176 According to the Miami Workers Center, all of these pillars are essential in making social change, but the pillar of power is most crucial in the struggle to win true liberation for all oppressed communities. n177 [\*614] In their estimation, our movements suffer when the pillar of power is forgotten and/or not supported by the other pillars, or when the pillars are seen as separate and independent, rather than as interconnected, indispensable aspects of the whole infrastructure that is necessary to build a just society. n178 Organizations with whom we work are generally dedicated solely to providing services, changing policies, or providing public education. Unfortunately, each of these endeavors exists separate from one another and perhaps most notably, separate from community organizing. In SRLP's vision of change, this separation is part of maintaining structural capitalism that seeks to maintain imbalances of power in our society. Without incorporating the pillar of power, service provision, policy change, and public education can never move towards real social justice. n179 B. Lawyering for Empowerment In the past few decades, a number of alternative theories have emerged that help lawyers find a place in social movements that do not replicate oppression. n180 Some of the most well-known iterations of this theme are "empowerment lawyering," "rebellious lawyering," and "community lawyering." n181 These perspectives share skepticism of the efficacy of impact litigation and traditional direct services for improving the conditions faced by poor clients and communities of color, because they do not and cannot effectively address the roots of these forms of oppression. n182 Rather, these alternative visions of lawyering center on the empowerment of community members and organizations, the elimination of the potential for dependency on lawyers and the legal system, and the collaboration between lawyers and directly impacted communities in priority setting. n183 Of the many models of alternative lawyering with the goal of social justice, we will focus on the idea of "lawyering for empowerment," generally. The goal of empowerment lawyering is to enable a group of people to gain control of the forces that affect their lives. n184 Therefore, the goal of empowerment lawyering for low-income transgender people of [\*615] color is to support these communities in confronting the economic and social policies that limit their life chances. Rather than merely representing poor people in court and increasing access to services, the role of the community or empowerment lawyer involves: organizing, community education, media outreach, petition drives, public demonstrations, lobbying, and shaming campaigns . . . [I]ndividuals and members of community-based organizations actively work alongside organizers and lawyers in the day-to-day strategic planning of their case or campaign. Proposed solutions--litigation or non-litigation based--are informed by the clients' knowledge and experience of the issue. n185 A classic example of the complex role of empowerment within the legal agenda setting is the question of whether to take cases that have low chances of success. The traditional approach would suggest not taking the case, or settling for limited outcomes that may not meet the client's expectations. However, when our goals shift to empowerment, our strategies change as well. If we understand that the legal system is incapable of providing a truly favorable outcome for low-income transgender clients and transgender clients of color, then winning and losing cases takes on different meanings. For example, a transgender client may choose to bring a lawsuit against prison staff who sexually assaulted her, despite limited chance of success because of the "blue wall of silence," her perceived limited credibility as a prisoner, barriers to recovery from the Prison Litigation Reform Act, and restrictions on supervisory liability in § 1983 cases. Even realizing the litigation outcome will probably be unfavorable to her, she may still develop leadership skills by rallying a broader community of people impacted by similar issues. Additionally, she may use the knowledge and energy gained through the lawsuit to change policy. If our goal is to familiarize our client with the law, to provide an opportunity for the client [\*616] and/or community organizers to educate the public about the issues, to help our client assess the limitations of the legal system on their own, or to play a role in a larger organizing strategy, then taking cases with little chance of achieving a legal remedy can be a useful strategy. Lawyering for empowerment means not relying solely on legal expertise for decisionmaking. It means recognizing the limitations of the legal system, and using our knowledge and expertise to help disenfranchised communities take leadership. If community organizing is the path to social justice and "organizing is about people taking a role in determining their own future and improving the quality of life not only for themselves but for everyone," then "the primary goal [of empowerment lawyering] is building up the community." n186 C. Sharing Information and Building Leadership A key to meaningful participation in social justice movements is access to information. Lawyers are in an especially good position to help transfer knowledge, skills, and information to disenfranchised communities--the legal system is maintained by and predicated on arcane knowledge that lacks relevance in most contexts but takes on supreme significance in courts, politics, and regulatory agencies. It is a system intentionally obscure to the uninitiated; therefore the lawyer has the opportunity to expose the workings of the system to those who seek to destroy it, dismantle it, reconfigure it, and re-envision it. As Quigley points out, the ignorance of the client enriches the lawyer's power position, and thus the transfer of the power from the lawyer to the client necessitates a sharing of information. n187 Rather than simply performing the tasks that laws require, a lawyer has the option to teach and to collaborate with clients so that they can bring power and voice back to their communities and perhaps fight against the system, become politicized, and take leadership. "This demands that the lawyer undo the secret wrappings of the legal system and share the essence of legal advocacy--doing so lessens the mystical power of the lawyer, and, in practice, enriches the advocate in the sharing and developing of rightful power." n188 Lawyers have many opportunities to share knowledge and skills as a form of leadership development. This sharing can be accomplished, for example, through highly collaborative legal representation, through community clinics, through skill-shares, or through policy or campaign meetings where the lawyer explains what they know about the existing structures and fills in gaps and questions raised by activists about the workings of legal systems. D. Helping to Meet Survival Needs SRLP sees our work as building legal services and policy change that directly supports the pillar of power. n189 Maintaining an awareness of the limitations and pitfalls of traditional legal services, we strive to provide services in a larger context and with an approach that can help support libratory work. n190 For this reason we provide direct legal services but also work toward leadership development in our communities and a deep level of support for our community-organizing allies. Our approach in this regard is to make sure our community members access and obtain all of the benefits to which they are entitled under the law, and to protect our community members as much as possible from the criminalization, discrimination, and harassment they face when attempting to live their lives. While we do not believe that the root causes keeping our clients in poverty and poor health can be addressed in this way, we also believe that our clients experience the most severe impact from state policies and practices and need and that they deserve support to survive them. n191 Until our communities are truly empowered and our systems are fundamentally changed to increase life chances and health for transgender people who are low-income and people of color, our communities are going to continue to have to navigate government agencies and organizations to survive.

### Critical Impact

#### Representation in the law is a critical rallying point for social transformation – a reason why our education is both uniquely good but also why the plan precludes any alt

Karl Klare 11, George J. & Kathleen Waters Matthews Distinguished University Professor, Northeastern University School of Law, “Teaching Local 1330—Reflections on Critical Legal Pedagogy”, School of Law Faculty Publications. Paper 167. http://hdl.handle.net/2047/d20002528

By now it has begun to dawn that one of the subjects of this class session is how lawyers translate their moral intuitions and sense of justice into legal arguments. **Most** beginning students have found themselves in the situation of wanting to express their moral intuitions in the form of legal arguments but of feeling powerless to do so. A common attitude of Northeastern students is that a lawyer cannot turn moral and political convictions into legal arguments in the context of case-litigation. If you are interested in directly pursuing a moral and/or political agenda, at a minimum you need to take up legislative and policy work, and more likely you need to leave the law altogether and take up grass roots organizing instead. I insist that we keep the focus on litigation for this class period. After the straw poll, I ask the students to simulate the role of Staughton Lynd‟s legal assistants and to assume that the court has just definitively rejected the claims based on contract, promissory estoppel, and the notion of a community property right. However, they should also assume, counter-factually, that Judge Lambros stayed dismissal of the suit for ten days to give plaintiffs one last opportunity to come up with a theory. I charge the students with the task of making a convincing common law argument, supported by respectable legal authority, that the plaintiffs were entitled to substantial relief. Put another way, I ask the students to prove that Judge Lambros was mistaken—that he was legally wrong—when he concluded that there was no basis in existing law to vindicate the workers‟ and community‟s rights. In some classroom exercises, I permit students to select the side for which they wish to argue, but I do not allow that in this session. All students are asked to simulate the role of plaintiffs‟ counsel and to make the best arguments they can—either because they actually believe such arguments and/or because in their simulated role they are fulfilling their ethical duty to provide zealous representation. A recurring, instant reflex is to say: “it‟s simple—the workers‟ human rights were violated in the Youngstown case.” I remind the class that the challenge I set was to come up with a common law theory. The great appeal of human rights discourse for today‟s students is that it seems to provide a technical basis upon which their fervent moral and political commitments appear to be legally required. “What human rights?” I ask. The usual answers are (1) “they had a right to be treated like human beings” or (2) “surely there is some human right on which they can base their case.” To the first argument I respond: “well, how they are entitled to be treated is exactly what the court is called upon in this case to decide. Counsel may not use a re-statement of the conclusion you wish the court to reach as the legal basis supporting that conclusion.” To the second response I reply: “it would be nice if some recognized human right applied, but we are in the Northern District of Ohio in 1980. Can you cite a pertinent human rights instrument?” (Answer: “no.”) The students then throw other ideas on the table. Someone always proposes that U.S. Steel‟s actions toward the community were “unconscionable.” I point out that unconscionability is a defense to contract enforcement whereas the plaintiffs were seeking to enforce a contract (the alleged promise not to close the plant if it were rendered profitable). In any case, we have assumed that the judge has already ruled that there was no contract. Another suggestion is that plaintiffs go for restitution. A restitution claim arises when plaintiff gives or entrusts something of value to the defendant, and the defendant wrongfully refuses to pay for or return it. But here we are assuming that Judge Lambros has already ruled that the workers did not endow U.S. Steel with any property or value other than their labor power for which they were already compensated under the applicable collective bargaining agreements. If the community provided U.S. Steel with value in the nature of tax breaks or infrastructure development, the effect of Judge Lambros‟ ruling on the property claim is to say that these were not investments by the community but no-strings-attached gifts given in the hope of attracting or retaining the company‟s business. At this point I usually give a hint by saying, “if we‟ve ruled out contract claims, and we‟ve ruled property claims, what does that leave?” Aha, torts! A student then usually suggests that U.S. Steel committed the tort of intentional infliction of emotional distress (IIED).15 I point out that, even if it were successful, this theory would provide plaintiffs relief only for their emotional injuries, but not their economic or other losses, and most likely would not provide a basis for an injunction to keep the plant open. In any event, IIED is an intentional tort. What, I ask, is the evidence that U.S. Steel intends the plant shutdown to cause distress? The response that “they should know that emotional distress will result” is usually not good enough to make out an intentional tort. An astute student will point out that in some jurisdictions it is enough to prove that the defendant acted with reckless disregard for the likelihood that severe emotional distress would result. I allow that maybe there‟s something to that, but then shift ground by pointing out that a prima facie requirement of IIED is that the distress suffered go beyond what an “ordinary person” may be expected to endure or beyond the bounds of “civilized behavior.”16 Everyone knows that plants close all the time and that the distress accompanying job-loss is a normal feature of American life. A student halfheartedly throws out negligent infliction of emotional distress, to which my reply is: “In what way is U.S. Steel‟s proposed conduct negligent? The problem we are up against here is precisely that the corporation is acting as a rational profit-maximizer.” A student always proposes that plaintiffs should allege that what U.S. Steel did was “against public policy.” First of all, I say, “public policy” is not a cause of action; it is a backdrop against which conduct or contract terms are assessed. Moreover, what public policy was violated in this case? The student will respond by saying “it is against public policy for U.S. Steel to leave the community devastated.” I point out once again that that is the very conclusion for which we are contending—it is circular argument to assert a statement of our intended conclusion as the rationale for that conclusion. This dialogue continues for awhile. **One ineffective theory after another is put on the table. Only once or twice in the decades I have taught this exercise have the students gotten close to a viable legal theory**. But this is not wasted time—learning **occurs in** this phase of **the exercise**. **The point conveyed** is that while law and morals/politics are **inextricably intertwined, they are not the same**. For one thing, **lawyers have a distinct way of talking about and analyzing problems** that is characteristic of the legal culture of a given time and place. So-called “**legal reasoning**” **is actually a repertoire of** **conventional**, **culturally approved rhetorical moves and counter-moves** **deployed by lawyers to create an appearance of** the **legal necessity** of the results for which they contend. In addition, **good lawyers** actually **possess** **useful**, specialized **knowledge** not **generally** absorbed by **political theorists or movement** activists. **Legal training** **sensitizes us** **to the many** **complexities that arise whenever general norms and principles are implemented in the form of rules** of decision **or case applications**. **Lawyers know**, for example, that large stakes may turn on precisely how a right is defined, **who has standing** to vindicate it, **what remedies it provides, how the right is enforced** and in what venue(s), and so on. **We are not doing our jobs** properly **if we argue,** simply, “**what the defendant did was unjust and the plaintiff deserves relief**.” No one needs a lawyer to make the “what the defendant did was unjust” argument. As Lynd‟s account shows, the workers of Youngstown did make that argument in their own, eloquent words and through their collective resistance to the shut-downs. **If “what the defendant did was unjust” is all we have to offer**, **lawyers bring no added value to the table. Progressive students** sometimes **tell themselves** that **law is** basically **gobbledygook**, but that you can assist movements for social change if you learn how to spout the right gobbledygook. In this view of legal practice, “creativity” consists in identifying an appropriate technicality that helps your client. But in the Youngstown situation, we are way past that naïve view. There is no “technicality” that can win the case. In this setting, **a social justice lawyer must use the bits and pieces lying around to generate** **new legal knowledge** and **new legal theories**. And **these new theories must say something more than** “**my client deserves to win**” (although it is fine to commence one‟s research on the basis of that moral intuition). The class is beginning to get frustrated, and around now someone says “well, what do you expect? This is capitalism. There‟s no way the workers were going to win.” The “this-is-capitalism” (“TIC”) statement sometimes comes from the right, sometimes from the left, and usually from both ends of the spectrum but in different ways. The TIC statement precipitates another teachable moment. I begin by saying that we need to tease out exactly what the student means by TIC, as several interpretations are possible. For example, TIC might be a prediction of what contemporary courts are most likely to do. That is, TIC might be equivalent to saying that “it doesn‟t matter what theory you come up with; 999 US judges out of 1,000 would rule for U. S. Steel.”17 I allow that this is probably true, but not very revealing. The workers knew what the odds were before they launched the case. Even if doomed to fail, a legal case **may still make a contribution to social justice** if the litigation creates a focal point **of energy around which a community can mobilize, articulate moral and political claims, educate the wider public, and conduct political consciousness-raising**. And if there is political value in pursuing a case, we might as well make good legal arguments. On an alternative reading, the TIC observation is more ambitious than a mere prediction. It might be a claim that a capitalist society requires a legal structure of a certain kind, and that therefore professionally acceptable legal reasoning within capitalist legal regimes cannot produce a theory that interrogates the status quo beyond a certain point. Put another way, some outcomes are so foreign to the bedrock assumptions of private ownership that they cannot be reached by respectable legal reasoning. A good example of an outcome that is incompatible with capitalism, so the argument goes, is a court order interfering with U.S. Steel‟s decision to leave Youngstown. This reading of the TIC comment embodies the idea that legal discourse is encased within a deeper, extra-legal structure given by requirements of the social order (capitalism), so that within professionally responsible legal argument the best lawyers in the world could not state a winning theory in Local 1330. Ironically, **the left and the right in the class often share this belief.** I take both conservative and progressive students on about this. I insist that the claim that our law is constrained by a **rigid** meta-logic of capitalism—which curiously parallels the notion that legal outcomes are tightly constrained by legal reasoning—is just plain wrong. Capitalist societies recognize all **sorts of limitations** on the rights of property owners. Professor Singer‟s classic article catalogues a multitude of them.18 The claim is **not only false**, **it is a** dangerous **falsehood**. **To believe TIC in this sense is to limit in advance our aspirations for what social justice lawyering can accomplish**. Now the class begins to sense that I am not just playing law professor and asking rhetorical questions to which there are no answers. The students realize that I actually think that I have a theory up my sleeve that shows that Judge Lambros was wrong on the law. If things are going well, the students begin to feel an emotional stake in the exercise. Many who voted in the straw poll that the plaintiffs deserved to win are anxious to see whether I can pull it off. Other students probably engage emotionally for a different reason—the ones who have been skeptical or derisive of my approach all term hope that my “theory,” when I eventually reveal it, is so implausible that I will fall flat on my face. I begin to feed the students more hints. One year I gave the hint, “What do straying livestock, leaking reservoirs, dynamite blasting, and unsafe products have in common?”—but that made it too easy. Usually my hints are more oblique, as in “does anything you learned about accident law ring a bell?” Whatever the form, the students take the hints, and some start cooking with gas. Over the next few minutes, the pieces usually fall into place. The legal theory toward which I have been steering the students is that U.S. Steel is strictly liable in tort for the negative social effects of its decision to disinvest in Youngstown. I contend that that is what the law provided in Ohio in 1980, and therefore a mechanism was available for the District Court to order substantial relief. A basic, albeit contested theme of modern tort law, which all students learn in first year, is that society allows numerous risky and predictably harmful activities to proceed because we deem those activities, on balance, to be worthwhile or necessary. In such cases, the law often imposes liability rules designed to make the activity pay for the injuries or accidents it inevitably causes. For more than a century, tort rules have been fashioned to force actors to take account of all consequences proximately attributable to their actions, so that they will internalize the relevant costs and price their products accordingly. The expectation is that in the ordinary course of business planning, the actor will perform a cost/benefit analysis to make sure that the positive values generated by the activity justify its costs. Here, I remind the students of the famous Learned Hand Carroll Towing formula19 comparing B vs. PL, where B represents the costs of accident avoidance (or of refraining from the activity when avoidance is impossible or too costly); and P x L (probability of the harm multiplied by the gravity of the harm) reflects foreseeable accident costs.20 The tort theory that evolved from this and similar cost/benefit approaches is called “market deterrence.” The notion is that liability rules should be designed to induce the actor who is in the best position to conduct this kind of cost/benefit analysis with respect to a given activity to actually conduct it. Such actors will have incentives to make their products and activities safer and/or to develop safer substitute products and activities.21 Actors will then pass each activity‟s residual accident costs on to consumers by “fractionating” and “spreading” such costs through their pricing decisions. As a result, prices will give consumers an accurate picture of the true social costs of the activity, including its accident costs. Consumers are thus enabled to make rational decisions about whether to continue purchasing the product or activity in light of its accident as well as its production costs. In principle, if a particular actor produces an unduly risky product (in the sense that its accident costs are above “market level”), that actor‟s products will be priced above market, and he/she will be driven out of business.22 Tort rules have long been crafted with an eye toward compelling risky but socially valuable activities or enterprises to internalize their external costs. My examples—to which the students were exposed in first year—are the ancient rule imposing strict liability for crop damage caused by escaping livestock;23 strict liability under the doctrine of Rylands v. Fletcher for the escape of dangerous things brought onto one‟s property;24 strict liability under Restatement (Second) § 519 for damage caused by “abnormally dangerous activities” such as dynamite blasting;25 and most recently, strict products liability.26 Of course, there are many exceptions to this approach. For example, “unavoidably unsafe” or “Comment k products” are deemed non-defective and therefore do not carry strict liability. And of course the U.S. largely rejected Rylands. Why was that? Because, as was memorably stated in Losee v. Buchanan: “We must have factories, machinery, dams, canals and railroads. They are demanded by the manifold wants of mankind, and lay at the basis of all our civilization.”27 In assuming that entrepreneurial capitalism would be stymied if enterprises were obliged to pay for the harms they cause, the Losee court accepted a strong version of TIC. Time permitting, I touch briefly on the debate about whether the flourishing of the negligence principle in the U.S. subsidized 19th century entrepreneurial capitalism,28 the possible implications of the Coase Theorem for our discussion of Local 1330,29 and the debate about whether it is appropriate for courts to fashion common law rules with an eye toward their distributive as well as efficiency consequences.30 With this as background, I argue that the District Court should have treated capital mobility—investors‟ circulation of capital in search of the highest rate of return—as a risky but socially valuable activity warranting the same legal treatment as straying cattle and dynamite blasting. Capital mobility is socially valuable. It is indispensable for economic growth and flexibility. Capital mobility generates important positive externalities for “winners,” such as economic development and job-creation at the new site of investment. However, capital mobility also predictably causes negative external effects on “bystanders” (the ones economists quaintly label “the losers”). We discussed some of these externalities at the outset of the class—the trauma associated with income interruption and pre-mature retirement, waste or destruction of human capital, multiplier effects on the local economy, and social pathologies and community decline of the kind experienced in Youngstown. The plaintiffs should have argued that capital mobility must internalize its social dislocation costs for reasons of economic efficiency, and that this can be accomplished by making investors strictly liable in tort for the social dislocation costs proximately caused by their capital mobility decisions. An investor considering shifting capital from one use to another will compare their respective rates of return. In theory, the investment with the higher return is socially optimal (as well as more profitable for the individual investor). The higher-return investment enlarges the proverbial pie. But investors must perform accurate comparisons of competing investment opportunities in order for the magic hand of the market to perform its magic. A rational investor bases her analysis primarily on price signals reflecting estimated rates of return on alternative investment options. This comparison will yield an irrational judgment leading to a socially suboptimal investment decision unless the estimated rate of return on the new investment reflects its external effects, both positive and negative. Investors often have public-relations incentives to tout the positive economic consequences promised at the new location. To guarantee rational decision making, the law must force investors contemplating withdrawal of capital from an enterprise to also carefully consider the negative social dislocation costs properly attributable to the activity of disinvestment. This can be achieved by making capital mobility strictly liable for its proximately caused social dislocation costs.31 This approach erects no inefficient barriers to capital mobility, nor does it bar all disinvestment decisions that may cause disruption and loss in the exit community. Other things being equal, if the new investment discounted by the social dislocation costs of exit will generate a higher rate of return than the current use of the capital, the capital should be disinvested from the old use and transferred to the new use. However, if investors are not forced by liability rules to take into account the social dislocation costs of disinvestment, the new investment opportunity will appear more attractive than it really is in a social sense. The situation involves a classic form of market failure. The market is imperfect because investors are not obliged to take into account the negative social dislocation costs proximately caused by their decisions. Inaccurate price signals lead to the overproduction of capital movement and therefore to a suboptimal allocation of resources. Apart from any severance and unemployment benefits received by workers at the old plant, the social dislocation costs of disinvestment are almost entirely externalized onto the workers and the surrounding community. Strict tort liability will induce investors and their downstream customers to fractionate and spread the dislocation costs of capital mobility when pricing the products of the new activity. This will provide those who use or benefit from the new activity at the destination community more accurate signals as to its true social costs and oblige them to fractionally share in the misfortunes afflicting the departure community. Suppose, for example, that U.S. Steel invested the money it took out of Youngstown toward construction of a modern, high-tech steel mill in a Sunbelt state. The price of steel produced at the new mill should fractionally reflect social dislocation costs in Youngstown. According to legal “common sense” and mainstream economic theory, the movement of capital from a lesser to a more profitable investment is an unambiguous social good. Allowing capital to migrate to its highest rate of return guarantees that society‟s resources are devoted to their most productive uses. Society as a whole is better off if capital is permitted freely to migrate to the new investment and there to grow the pie. In short, the free mobility of capital maximizes aggregate welfare. We are all “winners” in the long run, even if some unfortunate “losers” might get hurt along the way. It follows as an article of faith that any legal inhibition on the mobility of capital is inefficient and socially wasteful. This is why mainstream legal thinking refuses to accord long-term workers or surrounding communities any sort of “property interest” in the enterprise which a departing investor is obliged to buy out before removal.32 An unwritten, bed-rock assumption of US law is that capital is not and should not be legally responsible for the social dislocation costs occasioned by its mobility.33 Such costs are mostly externalized onto employees and the surrounding community, even if the exit community had subsidized the old investment with tax breaks and similar forms of corporate welfare. The legal common sense about capital mobility is mistaken. It is not a priori true that the movement of capital toward the greatest rate of return unambiguously enhances aggregate social welfare. Free capital mobility maximizes aggregate welfare and allocates resources to their most productive uses only in a perfect market; that is, only in the absence of market failure. The claim that free capital mobility is efficient is sometimes true, and sometimes it is not. It all depends on the particular facts and circumstances on the ground. Voilà. Judge Lambros was wrong. In 1980, a mechanism did exist in our law to recognize the plaintiffs‟ claims and afford them substantial relief for economic, emotional, and other losses.34 All that was required was a logical extension of familiar torts thinking. Had Judge Lambros correctly applied well-known and time-honored torts principles, he would have treated the social dislocation costs of the plant closure as an externality that must be embedded in U.S. Steel‟s calculations regarding the relative profitability of the old and new uses to which it might put its capital. This would close the gap between private and social costs, thereby tending to perfect the market. Notice an important rhetorical advantage of this theory—its core value is economic efficiency. The plaintiffs can get this far along in their argument without mentioning “fairness,” “equity,” or “justice,” let alone “human rights,” values that are often fatal to legal argument in U.S. courts today.35 I now brace myself for the “you gotta be kidding me” phase of the discussion. Objections cascade in. The progressive students want to be convinced that this is really happening. The mainstream students want to poke holes and debunk. A few of them are grateful at last for an opportunity to show how misguided they always knew my teaching was. Always, students assert that my summary discussion of the cost/benefit analysis omitted various costs and benefits. For example, one year I omitted to say that the social dislocation costs in the exit community must be discounted by ameliorative public expenditures such as unemployment insurance benefits. My response to this type of objection is always the same: “you are absolutely right, that cost or benefit should be included in the analysis. And here are a few more considerations we would need to address to perfect the cost/benefit analysis which I left out only in the interest of time.” But I learn from this discussion; not infrequently, students contribute something I had not previously considered. A frequent objection is that the task of quantifying the social dislocation costs associated with capital mobility is just too complicated and difficult. I concede that it is a complex task and that conservative estimates might be required in place of absolute precision. I ask, however, whether it is preferable to allow investors to proceed on the basis of price-signals we know to be wrong or to induce them to use best efforts to arrive at fair estimates. Separation of powers always comes up, as it should. I go through the usual riffs. Yes, I concede, these problems cry out for a comprehensive legislative solution rather than case-by-case adjudication. But standard, well-known counter-arguments suggest that Judge Lambros should nevertheless have imposed tort liability in this case. For one thing, determining the rules of tort liability has always been within the province of courts. Deferring to the status quo (that those who move capital are not legally responsible for negative externalities) is every bit as much a choice, every bit as much “activism” or “social engineering,” as altering the status quo. Legal history is filled with cases in which the legislature was only prompted to address an important public policy concern by the shock value of a court decision. Particularly is this so in cases involving the rights and interests of marginalized, insular, and under-represented groups like aging industrial workers. I note that Congress eventually responded to the plant closing problem with the WARN Act, a modest but not unimportant effort to internalize to enterprises some of the social dislocation costs of capital disinvestment. The statute liquidates these costs into a sum equal to sixty days‟ pay after an employer orders a plant closing or mass layoff without giving proper notice.36 I call the students‟ attention to the provision of WARN barring federal courts from enjoining plant closings37 and ask why Congress might have included that restriction. Another common objection concerns causation. A student will say: “The closedown of the mills, let alone the shutdown of any particular plant, could not have caused all of the suicides, heart failures, domestic violence, and so on, in Youngstown. Surely many such tragedies would have occurred anyway, even if U.S. Steel had remained. It isn‟t fair to impose liability on U.S. Steel for everything bad that happened in Youngstown during the statute-of-limitations period.” I immediately say that this is a terrific point, and that I was hoping someone would raise it. I compliment the student by saying that the question shows that he/she is now tapping legal knowledge. Typically, the class is concerned with causation-in-fact or “but for” causation. Their question is, how do we know that a plant shutdown caused any particular case of heart failure or suicide in Youngstown? Problems of causal uncertainty are a familiar issue, and I remind students that they were exposed to several well-known responses in Torts. A time-honored, if simplistic device is to shift the burden of proof regarding causationinfact to the defendant, when everyone knows full well that the defendant has no more information than the plaintiff with which to resolve the problem of causal uncertainty.38 In recent decades, courts have developed more sophisticated responses to problems of causal uncertainty as, for example, in the DES cases. As the court stated in Sindell:39 In our contemporary complex industrialized society, advances in science and technology create fungible goods which may harm consumers and which cannot be traced to any specific producer. The response of the courts can be either to adhere rigidly to prior doctrine, denying recovery to those injured by such products, or to fashion remedies to meet these changing needs. Just as Justice Traynor in his landmark concurring opinion in Escola . . . recognized that in an era of mass production and complex marketing methods the traditional standard of negligence was insufficient to govern the obligations of manufacturer to consumer, so should we acknowledge that some adaptation of the rules of causation and liability may be appropriate in these recurring circumstances . . . .40 At this point, some of the progressive students are beginning to salivate. They came to law school with the hope that legal reasoning would provide them a highly refined and politically neutral technology for speaking truth to power. The first semester disabuses most of them of that crazy idea. They have learned that they will not find certainty or answers in legal discourse, and that legal texts are minefields of gaps, conflicts, and ambiguities with moral and political implications. I can tell from the glint in their eyes that they are beginning to ask themselves whether this economics stuff, which they formerly shunned like the plague, might provide a substitute toolbox of neutral technologies with which to demonstrate that redress for workers and other subordinated and marginalized groups is legally required. I cannot allow them to think that. Therefore, unless an alert student has spotted it, I now reveal my Achilles‟ heel. The weak link in my argument is the age-old question of proximate causation. Assume we solve the causation-in-fact problem. For example, assume that by analogy to the Sindell theory of market-share liability, the court arrives at a fair method of attributing to the plant shutdown some portion of the social trauma and injuries occurring in the wake of U.S. Steel‟s departure from Youngstown. How do we know whether the plant closing proximately caused these harms? What do we mean by “proximate causation” anyway, and why does it matter? These questions present another exciting, teachable moment. Naturally, the students haven‟t thought about proximate cause since first year. They barely remember what it is and how it differs from causation-in-fact. Some 3Ls shuffle uncomfortably knowing that the Bar examination looms, and they are soon going to need to know about this. I provide a quick review of proximate causation which addresses the question, how far down the chain of causation should liability reach? I illustrate my points by referring to Palsgraf v. Long Island R.R,41 which all law students remember. Perhaps U.S. Steel might fairly be held accountable for the suicide of steelworkers within ninety days of the plant closing, but we might draw the line before holding U.S. Steel liable for a stroke suffered by a steelworker‟s spouse five years later. Now keyed in to what proximate cause doctrine is about, the students eagerly wait for me to tell them what the “answer” is, that is, where proximate causation doctrine would draw the line in the Youngstown case. That‟s when I give them the bad news. I explain that proximate causation doctrine does not provide a determinate analytical method for measuring the scope of liability. We pretend that buzzwords like “reasonable foreseeability” or “scope-of-the-risk” give us answers, but ultimately decisions made under the rubric of proximate causation are always value judgments.42 The conclusion that “X proximately caused Y” is a statement about the type of society we want to live in. At this juncture, the 3Ls grumpily realize that I am not going to be much help in preparing them for their bar review course. I now distribute a one-page hand-out on proximate causation prepared in advance. The handout reprints Justice Andrews‟ remarkable observation in his Palsgraf dissent: What we . . . mean by the word „proximate‟ is, that because of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point. This is not logic. It is practical politics . . . . It is all a question of expediency. There are no fixed rules to govern our judgment. There are simply matters of which we may take account.43 I point out that causation-in-fact analysis, too, always involves perspective and value judgments.44 Why assume that water escaping the reservoir diminished the value of the neighboring coal mining company‟s land? Why not assume that the coal company‟s decision to dig close to the border diminished the value of the manufacturer‟s land (by increasing the cost of using the type of reservoir needed in its production process)? For that matter, why assume that the cattle trample on the neighbors‟ crops? Why not assume that the crops get in the way of the cattle? My handout also contains my variation on Robert Keeton‟s famous definition of proximate cause45: When a court states that „the defendant‟s conduct was the proximate cause of (some portion of) the plaintiff‟s injuries,‟ what the court means is that (1) the defendant‟s conduct was a cause-in-fact of that portion of plaintiff‟s injuries; and (2) the defendant‟s conduct and the plaintiff‟s specified injuries are so related that it is appropriate, from the moral and social-policy points of view, to hold the defendant legally responsible for that portion of the plaintiff‟s injuries. What we mean when we ask whether the social dislocation costs associated with the shutdown of the steel plant were proximately caused by capital mobility is whether these costs are, in whole or in part, properly attributable from a moral/political point of view to U.S. Steel‟s decision to disinvest. Economic “science” does not and cannot establish in a value-neutral manner that the social dislocation costs of the plant shutdown are a negative externality of capital mobility. A conclusion of that kind requires a value judgment that we disguise under the rubric of “proximate causation,” a value judgment about whom it is appropriate to ask to bear what costs related to what injuries. The lesson is that in legal reasoning **there is no escape** **from moral and political choice**. If things have gone according to plan, time conveniently runs out, and the class is dismissed on that note. What am I trying to accomplish in a class like this? What are the objectives of critical legal pedagogy? Legal education should **empower students**. It should put them in touch with their **own capacity** to take control over their lives and professional education and development. It should enable them to experience the possibility of participating, **as lawyers,** **in transformative social movements**. But all too often classroom legal education is deadening. The law student‟s job, mastering doctrine, appears utterly unconnected to any process of learning about oneself or developing one‟s moral, political, or professional identity. Classroom legal education tends to reinforce **a sense of powerlessness** about our capacity to change social institutions. Indeed, it often induces students to feel that they are powerless to shape and alter their own legal education. Much of legal education induces in students a pervasive and exaggerated **sense of the constraint of legal rules** and roles and the students‟ inability to do much about it. In capsule form, the goals of critical legal pedagogy are— • **to disrupt the socialization process** that occurs during legal education; • **to unfreeze entrenched habits** of mind and **deconstruct** the false claims of necessity which constitute so-called “legal reasoning”; • to urge students to see their life’s work ahead as an opportunity to unearth and challenge law’s dominant ideas about society, justice, and human possibility and to infuse **legal rules and practices** **with** emancipatory and egalitarian content; • to persuade students that legal discourses and practices comprise a **medium**, **neither infinitely plastic nor inalterably rigid**, in which they can pursue moral and political projects and **articulate alternative visions of social organization and social justice**; • to train them to **argue** professionally and respectably **for the utopian and the impossible**; • to alert them that legal cases potentially provide a forum for **intense public consciousness-raising** **about** issues of **social justice**; • to encourage them to view legal representation as an opportunity to challenge, push, and relocate the boundaries between intra-systemic and extra-systemic activity, that is, an opportunity **to work within the system** in a way that reconstitutes it; and • to show that the existing social order is **not immutable** but “is merely possible, and that people have the freedom and power to act upon it.”46 The most important point of the class is that social justice lawyers **never give up.** **The appropriate response** **when you think you have a hopeless case** **is to go back and do more work in the legal medium**.

## Underview

### Theory

#### Aff gets 1ar theory; Otherwise neg can be infinitely abusive and there’s no way to check against this.

#### No Neg RVI; The 6 minute 2NR has more than enough time to win both theory and substance and a 6 minute 2NR that can go all in on theory and read me out which prevents theory from being recourse against even truly abusive positions.

#### Use reasonability on T and theory against my advocacy with a brightline of link and impact turn ground- you still have access to your generics such as a Kant NC, interference disads, or dependency disads. a) There are multiple legitimate interpretations of the topic and the aff goes into the round with no knowledge of 1NC strategy. I had to choose between mutually exclusive interps and the neg can always read T so don’t punish me for having to set grounds. b) Good is good enough specifically on T- the most fair or educational advocacy under competing interps is a race to the top which would mean I can only read one aff, which makes the aff a sitting duck and makes the round impossible to win.

### K

#### The perm solves critiques—critique is only useful with the AC’s discourse of hope.

Henry A. Giroux 15 [American scholar and cultural critic. One of the founding theorists of critical pedagogy in the United States, he is best known for his pioneering work in public pedagogy], “Beyond Dystopian Visions in the Age of Neoliberal Authoritarianism”, Truthout, 4 Nov 2015,

Fifth, another serious challenge facing advocates of a new truly democratic social order is the task of developing a discourse of both critique and possibility or what I have called a discourse of educated hope. Critique is important and is crucial to break the hold of common-sense assumptions that legitimate a wide range of injustices. The language of critique is also crucial for making visible the workings of unequal power and the necessity of holding authority accountable. But critique is not enough and without a discourse of hope, it can lead to a ~~paralyzing~~ despair or, even worse, a ~~crippling~~ cynicism. Hope speaks to imagining a life beyond capitalism, and combines a realistic sense of limits with a lofty vision of demanding the impossible. As Ernst Bloch once insisted, reason, justice and change cannot blossom without hope, because educated hope taps into our deepest experiences and longing for a life of dignity with others, a life in which it becomes possible to imagine a future that does not mimic the present. I am not referring to a romanticized and empty notion of hope, but to a notion of informed hope that faces the concrete obstacles and realities of domination but continues the ongoing task of "holding the present open and thus unfinished." (51)¶ The discourse of possibility not only looks for productive solutions. It also is crucial in defending those public spheres in which civic values, public scholarship and social engagement allow for a more imaginative grasp of a future that takes seriously the demands of justice, equity and civic courage. Democracy should encourage, even require, a way of thinking critically about education, one that connects equity to excellence, learning to ethics, and agency to the imperatives of social responsibility and the public good. Casino capitalism is a toxin that has created a predatory class of unethical zombies who are producing dead zones of the imagination that even Orwell could not have envisioned, while waging a fierce fight against the possibilities of a democratic future. The time has come to develop a political language in which civic values, social responsibility and the institutions that support them become central to invigorating and fortifying a new era of civic imagination, a renewed sense of social agency and an impassioned international social movement with a vision, organization and set of strategies to challenge the neoliberal nightmare engulfing the planet. Educators, artists, youth, intellectuals and others must refuse to succumb to the authoritarian forces that are circling US society, waiting for the resistance to stop and for the lights to go out. History is open, and as James Baldwin once insisted, "Not everything that is faced can be changed; but nothing can be changed until it is faced."

#### Solutions to oppression need to be grounded in policy rather than abstraction. K’s must be tied to an implementable, political solution to be effective.

Bryant 12: Left,” Larval Subjects—Levi R. Bryant’s philosophy blog, November 11th, Available Online at http://larvalsubjects.wordpress.com/2012/11/11/underpants-gnomes-a-critique-of-the-academic-left/, Accessed 02-21-2014)

**Unfortunately, the academic left falls prey to its own form of abstraction. It’s good at carrying out critiques that denounce various social formations, yet very poor at proposing any sort of realistic constructions of alternatives. This because it thinks abstractly in its own way, ignoring how networks, assemblages, structures, or regimes of attraction would have to be remade to create a workable alternative.** Here I’m reminded by the “underpants gnomes” depicted in South Park: The underpants gnomes have a plan for achieving profit that goes like this: Phase 1: Collect Underpants Phase 2: ? Phase 3: Profit! They even have a catchy song to go with their work: Well this is sadly how it often is with the academic left. Our plan seems to be as follows: Phase 1: Ultra-Radical Critique Phase 2: ? Phase 3: Revolution and complete social transformation! Our problem is that we seem perpetually stuck at phase 1 without ever explaining what is to be done at phase 2. Often the critiques articulated at phase 1 are right, but there are nonetheless all sorts of problems with those critiques nonetheless. In order to reach phase 3, we have to produce new collectives. In order for new collectives to be produced, people need to be able to hear and understand the critiques developed at phase 1. Yet this is where everything begins to fall apart. Even though these critiques are often right, we express them in ways that only an academic with a PhD in critical theory and post-structural theory can understand. How exactly is Adorno to produce an effect in the world if only PhD’s in the humanities can understand him? Who are these things for? We seem to always ignore these things and then look down our noses with disdain at the Naomi Kleins and David Graebers of the world. To make matters worse, we publish our work in expensive academic journals that only universities can afford, with presses that don’t have a wide distribution, and give our talks at expensive hotels at academic conferences attended only by other academics. Again, who are these things for? Is it an accident that so many activists look away from these things with contempt, thinking their more about an academic industry and tenure, than producing change in the world? If a tree falls in a forest and no one is there to hear it, it doesn’t make a sound! Seriously dudes and dudettes, what are you doing? But finally, and worst of all, us Marxists and anarchists all too often act like assholes. We denounce others, we condemn them, we berate them for not engaging with the questions we want to engage with, and we vilify them when they don’t embrace every bit of the doxa that we endorse. **We are every bit as off-putting and unpleasant as the fundamentalist minister or the priest of the inquisition** (have people yet understood that Deleuze and Guattari’s Anti-Oedipus was a critique of the French communist party system and the Stalinist party system, and the horrific passions that arise out of parties and identifications in general?). **This type of “revolutionary” is the greatest friend of the reactionary and capitalist because they do more to drive people into the embrace of reigning ideology** than to undermine reigning ideology. **These are the people that keep Rush Limbaugh in business.** Well done! But this isn’t where our most serious shortcomings lie. Our most serious shortcomings are to be found at phase 2. **We almost never make concrete proposals for how things ought to be restructured, for what new material infrastructures and semiotic fields need to be produced, and when we do, our critique-intoxicated cynics and skeptics immediately jump in with an analysis of all the ways in which these things contain dirty secrets, ugly motives, and are doomed to fail. How, I wonder, are we to do anything at all when we have no concrete proposals?** We live on a planet of 6 billion people. These 6 billion people are dependent on a certain network of production and distribution to meet the needs of their consumption. That network of production and distribution does involve the extraction of resources, the production of food, the maintenance of paths of transit and communication, the disposal of waste, the building of shelters, the distribution of medicines, etc., etc., etc. What are your proposals? How will you meet these problems? How will you navigate the existing mediations or semiotic and material features of infrastructure? Marx and Lenin had proposals. Do you? Have you even explored the cartography of the problem? Today we are so intellectually bankrupt on these points that we even have theorists speaking of events and acts and talking about a return to the old socialist party systems, ignoring the horror they generated, their failures, and not even proposing ways of avoiding the repetition of these horrors in a new system of organization. Who among our critical theorists is thinking seriously about how to build a distribution and production system that is responsive to the needs of global consumption, avoiding the problems of planned economy, ie., who is doing this in a way that gets notice in our circles? Who is addressing the problems of micro-fascism that arise with party systems (there’s a reason that it was the Negri & Hardt contingent, not the Badiou contingent that has been the heart of the occupy movement). At least the ecologists are thinking about these things in these terms because, well, they think ecologically. Sadly we need something more, a melding of the ecologists, the Marxists, and the anarchists. We’re not getting it yet though, as far as I can tell. Indeed, folks seem attracted to yet another critical paradigm, Laruelle. I would love, just for a moment, to hear a radical environmentalist talk about his ideal high school that would be academically sound. How would he provide for the energy needs of that school? How would he meet building codes in an environmentally sound way? How would she provide food for the students? What would be her plan for waste disposal? And most importantly, how would she navigate the school board, the state legislature, the federal government, and all the families of these students? What is your plan? What is your alternative? I think there are alternatives. I saw one that approached an alternative in Rotterdam. If you want to make a truly revolutionary contribution, this is where you should start. Why should anyone even bother listening to you if you aren’t proposing real plans? But we haven’t even gotten to that point. Instead **we’re like underpants gnomes, saying “revolution is the answer!” without addressing any of the infrastructural questions** of just how revolution is to be produced, what alternatives it would offer, and how we would concretely go about building those alternatives. Masturbation. “Underpants gnome” deserves to be a category in critical theory; a sort of synonym for self-congratulatory masturbation. We need less critique not because critique isn’t important or necessary– it is –but because we know the critiques, we know the problems. **We’re intoxicated with critique because it’s easy and safe. We best every opponent with critique. We occupy a position of moral superiority with critique. But do we really do anything with critique? What we need today, more than ever, is composition or carpentry.** Everyone knows something is wrong. Everyone knows **this system is destructive** and stacked against them. Even the Tea Party knows something is wrong with the economic system, despite having the wrong economic theory. None of us, however, are proposing alternatives. Instead we prefer to shout and denounce. Good luck with that.

## AT: K’s

### Generic K Overview

#### *The case outweighs and turns the critique—*

#### Utilizing legal representation isn’t a strive towards equality but uses the law for instrumental purposes as a survival strategy for people of color and trans youth in the system – it enables them to access life changing opportunities that ivory tower theorizing can’t account for and proves that only the permutation can solve

#### Turns the alt – proves that until you address material conditions, people locked up in prison for petty drug crimes don’t care about the alt so it’s ineffective and doesn’t get off the ground

#### We use the system to break down the system – legal representation allows us to expose the inner workings of the system in order to dismantle it from the inside – that’s Arkles

#### Perm do both

#### Perm do the aff and the alt in all other instances – either the alt is good enough to solve the residual links or would fail inevitably

#### We don’t affirm the state writ large – evaluate the links in the context of the plan – all the aff does is create coalitional support for people of color who don’t have representation – proves our coalitional politics preclude the alt – people in prison are the ones who need to be a part of your movements

### AT: Cap K

#### Housing policy is central to neolib

Rolnick 13, UN Special Rapporteur, 2013 [International Journal of Urban and Regional Research,View issue TOC , Volume 37, Issue 3, May 2013 ,Pages 1058–1066∂ Debates and Developments, Late Neoliberalism: The Financialization of Homeownership and Housing Rights, Authors Raquel Rolnik, First published: 24 April 2013Full publication history∂ DOI: 10.1111/1468-2427. This essay is a revised, updated and edited version of a thematic report on the financial crisis and the right to adequate housing presented by myself (as UN Special Rapporteur on the right to adequate housing) to the UN Human Rights Council in March 2009. The report was written with the assistance of Bahram Ghazi, then assistant to the housing mandate in the Office of the High Commissioner of Human Rights.

Over the last few decades we have witnessed a global U-turn in prevailing housing and urban policy agendas, spread around the world by the driving forces of globalization and neoliberalism. The new paradigm was mainly based on the withdrawal of states from the housing sector and the implementation of policies designed to create stronger and larger market-based housing finance models. The commodification of housing, together with the increased use of housing as an investment asset within a globalized financial market, has profoundly affected the enjoyment of the right to adequate housing. Taking the World Bank's 1993 manifesto as a starting point and the subprime crisis as its first great international flashpoint, this essay traces some key elements of the neoliberal approach to housing and its impact on the enjoyment of the right to housing in different contexts and times. The reform of housing policy — with all its components of homeownership, private property and binding financial commitments — has been central to the political and ideological strategies through which the dominance of neoliberalism is maintained. Conversely, the crisis (and its origins in the housing market) reflects the inability of market mechanisms to provide adequate and affordable housing for all.∂ to create stronger and larger market-based housing finance models. The commodification of housing, together with the increased use of housing as an investment asset within a globalized financial market, has profoundly affected the enjoyment of the right to adequate housing. Taking the World Bank's 1993 manifesto as a starting point and the subprime crisis as its first great international flashpoint, this essay traces some key elements of the neoliberal approach to housing and its impact on the enjoyment of the right to housing in different contexts and times. The reform of housing policy — with all its components of homeownership, private property and binding financial commitments — has been central to the political and ideological strategies through which the dominance of neoliberalism is maintained. Conversely, the crisis (and its origins in the housing market) reflects the inability of market mechanisms to provide adequate and affordable housing for all.∂ Introduction∂ Millions of indebted or foreclosed homeowners, the ‘subprime’ victims of a decade-long credit boom; empty neighborhoods, depopulated towns and bankrupted new developments; protesters occupying the streets and public spaces for months; a hunger strike by owners deprived of their promised apartments — scenes from different cities and regions at the end of the first decade of the twenty-first century.1 A crisis in the US mortgage market turned into an all-engulfing credit crunch which spread rapidly across the world. Not surprisingly, the first sector to be badly hit was housing. Fed by pension funds, private equity, hedge funds and other ‘fictitious commodities’, housing itself became a fictitious commodity when it was taken over by finance. (Fix, 2011; Rossi, 2013, this issue). The intensity of this change can be described as a movement which transformed a ‘sleeping beauty’ — an asset owned by traditional means — into a ‘fantastic ballet’, with assets changing hands through constant and rapid transactions (Zivkovic, 2006, cited in Carvalho, 2011: 155). Housing represented one of the most dynamic new frontiers of late neoliberalism during the decades of economic boom, and at the outset of the crisis was converted into one of the main Keynesian strategies to recover from it. According to Aalbers (2013: this issue), ‘neoliberalism is like that: it can further its agenda both during economic booms and economic busts’.∂ Backed by the political force of homeownership ideology (Ronald, 2008), deeply rooted in some societies and recently adopted in others, and by the ‘socialization of credit’, with its resultant inclusion of middle- and low-income consumers into financial circuits, the takeover of the housing sector by global finance opened up a new frontier for capital accumulation, allowing the free circulation of values across virtually all urban land (Harvey, 1989; Rossi, 2013). This movement has resulted in a path-dependent shift of housing paradigm in almost every nation-state; initiated by Wall Street and neoliberal US politicians, the change in the meaning and economic role of housing gained momentum with the fall of the Berlin Wall and the subsequent hegemony of free market ideology. Whether freely decided by governments or imposed by international financial institutions and other actors as loan conditions, the new paradigm was primarily based on the implementation of policies designed to create stronger and larger housing-based financial markets, to include middle- and low-income consumers.∂ Twenty years ago an influential World Bank (1993) report, Housing: Enabling Markets to Work, summarized the new thinking on housing policies: it contained not only extensive arguments on how important the housing sector could be for the economy, but also guidelines for governments on how to best design suitable policies. Since the 1990s, housing finance has increased dramatically in developed economies. In the US, UK, Denmark, Australia and Japan, residential mortgage markets today represent between 50% and 100% of gross domestic product (GDP) (Schwartz and Seabrooke, 2009: 16). From the former Soviet bloc of Central Asia and Eastern Europe (e.g. Kazakhstan and Ukraine) to Latin America (e.g. Chile, Mexico, Peru and Brazil), and from Africa (e.g. South Africa) to Asia (e.g. India, Thailand and China), the takeover of the housing sector by finance has been a massive and prevailing trend, so much so that a World Bank publication just over a decade later stated that ‘the [housing finance] genie is out of the bottle’ (Buckley and Kalarickal, 2005: 41).∂ The commodification of housing, as well as the increased use of housing as an investment asset integrated in a globalized financial market, has profoundly affected the enjoyment of the right to adequate housing across the world. The belief that markets could regulate the allocation of housing as the most rational means of resource distribution, combined with experimental ‘creative’ financial products underpinned by housing, has led public policymaking towards the abandonment of the conceptual meaning of housing as a social good, part of the commonalities a society agrees to share or to provide to those with fewer resources: a means to distribute wealth. In the new political economy centered on housing as a means to wealth, the value is the possibility of creating more value, which depends on the speed and number of transactions capable of generating value appreciation. In the same way as in other social fields, housing was affected by the wholesale dismantling of basic institutional welfare, and the mobilization of a range of policies intended to extend market discipline, competition and commodification (Brenner and Theodore, 2002). In each country, these new ideas confronted existing national welfare systems and housing coalitions.∂ Nowhere has the shift been greater than in housing and urban policies. Governments across the world soon endorsed neoliberal priorities such as fiscal constraint, free trade, reduced welfare spending and lower taxation. In post-socialist countries, the US and most European countries, privatization of public housing complexes, drastic cuts in housing investments and funds, plus reductions in welfare programs and rent subsidies, were accompanied by deregulation of financial markets and a new urban strategy to permit the mobilization of domestic capital and recycling of international capital. These new trends also hit less developed countries, where housing welfare systems had either never existed, or were weak and marginal in comparison to housing needs. The global imposition of neoliberalism has been highly uneven both socially and geographically, and its institutional forms and socio-political consequences have varied significantly across the world, depending on contextually specific interactions between inherited regulatory landscapes and emergent market-oriented restructuring projects (ibid.) Taking the World Bank's (1993) manifesto as a starting point and the subprime crisis as its first great international flashpoint, this essay traces some key elements of the neoliberal approach to housing and its impact on the enjoyment of the right to housing in different contexts and times, discussing in conclusion the present crisis and its perspectives.

#### The alt’s utopianism can’t solve.

Doran and Barry 6 – worked at all levels in the environment and sustainable development policy arena - at the United Nations, at the Northern Ireland Assembly and Dáil Éireann, and in the Irish NGO sector. PhD--AND-- Reader in Politics, Queen's University School of Politics, International Studies, and Philosophy. PhD Glasgow (Peter and John, Refining Green Political Economy: From Ecological Modernisation to Economic Security and Sufficiency, Analyse & Kritik 28/2006, p. 250–275, <http://www.analyse-und-kritik.net/2006-2/AK_Barry_Doran_2006.pdf>)

The aim of this article is to offer a draft of a realistic, but critical, version of green political economy to underpin the economic dimensions of radical views of sustainable development. It is written explicitly with a view to encouraging others to respond to it in the necessary collaborative effort to think through this aspect of sustainable development. Our position is informed by two important observations. As a sign of our times, the crises that we are addressing under the banner of sustainable development (however inadequately) render the distinction between what is ‘realistic’ and ‘radical’ problematic. It seems to us that the only realistic course is to revisit the most basic assumptions embedded within the dominant model of development and economics. Realistically the only longterm option available is radical. Secondly, we cannot build or seek to create a sustainable economy ab nihilo, but must begin—in an agonistic fashion—from where we are, with the structures, institutions, modes of production, laws, regulations and so on that we have. We make this point in Ireland with a story about the motorist who stops at the side of the road to ask directions, only to be told: “Now Ma’m, I wouldn’t start from here if I were you.” ¶ This does not mean simply accepting these as immutable or set in stone— after all, some of the current institutions, principles and structures underpinning the dominant economic model are the very causes of unsustainable development— but we do need to recognise that we must work with (and ‘through’—in the terms of the original German Green Party’s slogan of “marching through the institutions”) these existing structures as well as changing and reforming and in some cases abandoning them as either unnecessary or positively harmful to the creation and maintenance of a sustainable economy and society. Moreover, we have a particular responsibility under the current dominant economic trends to name the neo-liberal project as the hegemonic influence on economic thinking and practice. In the words of Bourdieu/Wacquant (2001), neoliberalism is the new ‘planetary vulgate’, which provides the global context for much of the contemporary political and academic debate on sustainable development. For example, there is a clear hierarchy of trade (WTO) over the environment (Multilateral Environmental Agreements) in the international rules-based systems. At the boundaries or limits of the sustainable development debate in both the UK and the European Union it is also evident that the objectives of competitiveness and trade policy are sacrosanct. As Tim Luke (1999) has observed, the relative success or failure of national economies in head-to-head global competition is taken by ‘geo-economics’ as the definitive register of any one nation-state’s waxing or waning international power, as well as its rising or falling industrial competitiveness, technological vitality and economic prowess. In this context, many believe ecological considerations can, at best, be given only meaningless symbolic responses, in the continuing quest to mobilise the Earth’s material resources. ¶ Our realism is rooted in the demos. The realism with which this paper is concerned topromote recognises that the path to an alternative economy and society must begin with a recognition of the reality that most people (in the West) will not democratically vote (or be given the opportunity to vote) for a completely different type of society and economy overnight. This is true even as the merits of a ‘green economy’ are increasingly recognised and accepted by most people as the logical basis for safeguards and guarantees for their basic needs and aspirations (within limits). The realistic character of the thinking behind this article accepts that consumption and materialistic lifestyles are here to stay. (The most we can probably aspire to is a wideningand deepening of popular movements towards ethical consumption, responsible investment, and fair trade.) And indeed there is little to be gained by proposing alternative economic systems which start from acomplete rejection of consumption and materialism. The appeal to realism is in part an attempt to correct the common misperception (and self-perception) of green politics and economics requiring an excessive degree of self-denial and a puritanical asceticism (see Goodin 1992, 18; Allison 1991, 170– 78). While rejecting the claim that green political theory calls for the complete disavowal of materialistic lifestyles, it is true that green politics does require the collective re-assessment of such lifestyles, and does require new economic signals and pedagogical attempts to encourage a delinking—in the minds of the general populus—of the ‘good life’ and the ‘goods life’. This does not mean that we need necessarily require thecomplete and across the board rejection of materialistic lifestyles. It must be the case that there is room and tolerance in a green economy for people to choose to live diverse lifestyles—some more sustainable than others—so long as these do not ‘harm’ others, threaten long-term ecological sustainability or create unjust levels of socio-economic inequalities. Thus, realism in this context is in part another name for the acceptance of a broadly ‘liberal’ or ‘post-liberal’ (but certainly not anti-liberal) green perspective.2¶ 1. Setting Out¶ At the same time, while critical of the ‘abstract’ and ‘unrealistic’ utopianism that peppers green and radical thinking in this area, we do not intend to reject utopianism. Indeed, with Oscar Wilde we agree that a map of the world that does not have utopia on it, isn’t worth looking at. The spirit in which this article is written is more in keeping with framing green and sustainability concerns within a ‘concrete utopian’ perspective or what the Marxist geographer David Harvey (1996, 433–435) calls a “utopianism of process”, to be distinguished from “closed”, blueprint-like andabstract utopian visions. Accordingly, the model of green political economy outlined here is in keeping with Steven Lukes’ suggestion that a concrete utopianism depends on the ‘knowledge of a self-transforming present, not an ideal future’ (Lukes 1984, 158).¶ It accepts the current dominance of one particular model of green political economy—namely ‘ecological modernisation’ (hereafter referred to EM)—as thepreferred ‘political economy’ underpinning contemporary state and market forms of sustainable development, and further accepts the necessity for green politics to positively engage in the debates and policies around EM from a strategic (as well as a normative) point of view.However, it is also conscious of the limits and problems with ecological modernisation, particularly in terms of its technocratic, supply-side and reformist ‘business as usual’ approach, and seeks to explore the potential to radicalise EM or use it as a ‘jumping off’ point for more radical views of greening the economy. Ecological modernisation is a work in progress; and that’s the point. ¶ The article begins by outlining EM in theory and practice, specifically in relation to the British state’s ‘sustainable development’ policy agenda under New Labour.3 While EM as currently practised by the British state is ‘weak’ and largely turns on the centrality of ‘innovation’ and ‘eco-efficiency’, the paper then goes on to investigate in more detail the role of the market within current conceptualisations of EM and other models of green political economy. In particular, a potentially powerful distinction (both conceptually and in policy debates) between ‘the market’ and ‘capitalism’ has yet to be sufficiently explored and exploited as a starting point for the development of radical, viable and attractive conceptions of green political economy as alternatives to both EM and the orthodox economic paradigm. We contend that there is a role for the market in innovation and as part of the ‘governance’ for sustainable development in which eco-efficiency and EM of the economy is linked to non-ecological demands of green politics and sustainable development such as social and global justice, egalitarianism, democratic regulation of the market and the conceptual (and policy)expansion of the ‘economy’ to include social, informal and noncash economic activity and a progressive role for the state (especially at the local/municipal level). Here we suggest that the ‘environmental’ argument or basis of green political economy in terms of the need for the economy to become more resource efficient, minimise pollution and waste and so on, has largely been won. What that means is that no one is disputing the need for greater resource productivity, energy and eco-efficiency. Both state and corporate/business actors have accepted the environmental ‘bottom line’ (often rhetorically, but nonetheless important) as a conditioning factor in the pursuit of the economic ‘bottom line’.

#### No alt to neolib

Jamie Peck 10, geography prof at the University of British Columbia, Postneoliberalism and its Malcontents, Antipode, Volume 41, Issue Supplement s1, pages 94–116

While Latin American experiences can and should spur the postneoliberal imagination, the region's lessons are also sobering ones. Here, audacious forms of neoliberalized accumulation by dispossession inadvertently prepared the ground for widespread social mobilization and radical resistance politics. And in the decade or so that followed, electoral realignments in Venezuela, Brazil, Argentina, Bolivia, Chile and elsewhere consolidated progressive gains, as a period of hegemonic dispute gave way to region-wide hegemonic instability (Sader 2009). **Moving purposefully in the direction of postneoliberal forms of governance has**, however, **been a challenge, even for the region's largest economies**. Global financial flows, trading regimes, and investment policies continue to be guided by logics of short-term, price competition—in the context of global overaccumulation—while progressive forms of multilateral coordination can only be negotiated in the long shadows of imperial and neoimperial power (Drake 2006). As Sader (2009:176) notes:¶ the deregulation fostered by neoliberal policies favoured the hegemony of financial capital in its speculative mode. In order to instate a different model, it would be necessary to introduce new forms of economic regulation, **which would be very difficult, even in the current crisis**, once deregulation has a foothold. **It could not come from a single country**, no matter what its importance, **because others would benefit from the flow of capital rejected in this country**. At the same time, **it would be hard to come to a large-scale international agreement, due to the different interests of the biggest powers and international corporations**.¶ **Whereas neoliberalism may have exposed the limits of financial capitalism, it has also undermined the strategic and organizational resources required for its transcendence**. In Sader's (2009) eyes, the root of the problem for progressive forces is what he characterizes as a “gulf” between the evident failures of neoliberalized capitalism and the potential of postneoliberal movements, forces, and interests. The short- and medium-term prospects for such forms of alternative politics will surely be structured (and to some extent constrained) by the neoliberalized terrains on which they must be prosecuted. **This is not simply a matter of contending with** (residual) **neoliberal power centers**, in economics ministries, in international financial institutions, in think tanks, in the media, and in much of the corporate sector. Perhaps more intractably, **it must also entail overcoming the profound reconstitution of** cross-national, interlocal, and cross-scalar **relations through** various forms of **market rule**, which facilitate the reproduction of neoliberalized logics of action, institutional routines, and political projects—both through the dull compulsion of competitive pressures and through the harsh imperatives of regulatory downloading.

### AT: Legalism/State Bad

#### The alt leads to neoliberal fill in – destroys agency and turns the K

Emmanuelle Jouannet 7, Professor, Universite Paris I - Pantheon Sorbonne, “ESSAY: WHAT IS THE USE OF INTERNATIONAL LAW? INTERNATIONAL LAW AS A 21ST CENTURY GUARDIAN OF WELFARE”, 28 Mich. J. Int'l L. 815, Michigan Journal of International Law, Lexis

It now seems impossible to turn back from the present course. To deny the new aims of contemporary law and to press for a return to minimalist liberal law would be to allow the neo-liberal powers that be to exploit the downfall of the international system for their own advantage. n94 Under no circumstance should we succumb to the ultraliberal refusal to tackle mutual problems in the way welfare-inducing law does, as the latter would thus become a regrettable avatar of classical liberal law. It is not, however, surprising that there is currently a resurgence, in [\*850] international law, of the old debate between ultraliberals, who express discontentment with too much law and bureaucracy, and moderate liberals, whose sole intent is to reform the system. Yet restoring the image of a classical but incentive-creating system would be inconsistent with the profound socio-cultural changes the contemporary international system has undergone, and with the legitimate aspirations held by millions of individuals, is therefore not an option either.¶ The shift toward ethical and functionalist welfare-inducing law is the product of a redefinition of politics and of the fabric of international society itself, and is accompanying the evolution of this society and structuring it accordingly. Classical society and liberal international law were based on international politics as defined solely by States. Contemporary welfare-inducing society presupposes that political power must aim at fostering communal wellbeing around the planet. But the 1945 consensus deteriorated long ago, as it was borne out of exceptional circumstances. It now needs to be reconstituted in the context of the new society. The legal values and objectives contemporary international law aspires to correspond to political priorities and certainly do not flow from a universal consciousness. They are the result of choices that were quite understandable in 1945, but that now need to be reformulated or revoked outright, as even if the same objectives undoubtedly still remain, the modalities have changed and the circle of addressees has become considerably larger. n95 Some have represented current phenomena in the international system as the result of a "crisis of authority" related to a double crisis of State sovereignty and of territoriality. n96 This is deemed to explain the inability of international law to regulate the current disorder and to create a stable order. However, just as one refers to a "global inversion" to describe the diminishing of sovereignties faced with emancipated groups and individuals, one could equally refer to an "inversion of international law" since this law is increasingly restraining States and empowering individuals, minorities, and peoples through the recognition of rights. This approach is said to be based on "the actor getting his own back on the system." n97 States are no longer the sole members, actors, and subjects of international society, and individuals and NGOs are now seeking recognition under international law. Today, there are hundreds of international organizations, thousands of NGOs - including 2,719 with ECOSOC status - and hundreds of multinationals [\*851] thriving in the 208 States and territories. These are the entities with which States, international organizations, and international politicians interact, n98 which is why political cohesion and the legitimacy of the existing system require that all actors adhere to shared values. n99 All could be different if there were greater consciousness of the fact that a legal system can be used beneficially and not simply endured passively. That being said, one should not minimize the role played by States, and should acknowledge the amicable concurrence of interstatists and cosmopolitans, voluntarists, and communitarians.¶ This is not to put in question the principle of interventionist welfare-inducing law, but rather to question its functioning and the limits to which it should be subject. This may appear surprising and perhaps even shocking considering the sociological state of the planet with all its inequalities and injustices, where collective and individual suffering has never been as dramatic and devastating. The neo-Marxist economists Etienne Balibar and Immanuel Wallerstein have illustrated how major conflicts of interest, monopolist and exclusionary phenomena, and the unequal development of powers have persisted due to an excess of unequal resistance from the periphery. n100 But this is precisely what has prompted the present essay, since the solution might actually lie in subjecting law to certain limits. International law may be "part of the problem," but it is also, as has been emphasised by Philippe Sands, n101 "part of the solution," so long as possible options do not go to the detriment of social or political processes or the will of the State. Without returning to classical minimalist law, we need to fight the preconception that reducing law is equivalent to regression, and that any limitation on sovereignty is a victory. How far should international law go in accomplishing its aims? Is it the miracle solution to all of the world's problems?¶ The answer is obviously no. Law is not a universal panacea. Politics determine international law, even if sometimes they appear to ignore it. Any discourse that glorifies international law and its virtues is usually [\*852] accompanied by criticism of its weaknesses and perverse effects. This anthropomorphic vision of international law has the aim of turning it into a being in its own right that can be conveniently accused of defaults that are in fact those of the entities that created it, i.e. principally States, politicians, international experts such as us international jurists, but also those who would like to appropriate international law, such as NGOs, lobbies, individuals/associations, think tanks, and multinational corporations, which undoubtedly exercise political power despite hesitating to acknowledge it openly. This anthropomorphic vision needs to be rejected so that everyone can be allocated their proper role and usefulness. In fact, the present situation is interesting in that it reveals the functioning of western political modernity and its tendency to isolate the legal dimension in order to attribute an exclusive and exorbitant role to it. Yet the difficulties and tensions that have resulted illustrate the necessity of re-evaluating the two other dimensions to which international law is fundamentally connected: the political and the social. No doubt it is therefore necessary to search for a better balance, or more precisely, to be more conscious of the political and social dimensions that are concealed behind the law, and which are masked by the heightened role of all that is legal. They no longer have the same mobilizing effect they used to have, at least less than is the case of, say, legal discourse on human rights. Law does not actually provide a response to all problems, even if law is now omnipresent. In fact, the merit of contemporary deconstructivist critique is to have deconstructed the illusion of complete legal emancipation and to have attempted to rehabilitate all that is purely political in the elaboration, interpretation, and application of rules; and it is undoubtedly this critique that will enable us to accept that international law can regain strength as a political means of regulating conduct. n102¶ What thus takes place behind the smokescreen of welfare-inducing law is a political game of inclusion and exclusion. Why has poverty not been eliminated as proclaimed? Is it because law has remained ineffective and impotent when faced with international reality? Or is it merely a tree concealing a forest of international renouncement? Reducing world poverty is a commensurable challenge and therefore a realizable objective, but it will not be possible as long as States and other actors have not set themselves truly fundamental and overriding aims for the benefit of the planet, as well as for their own domestic systems. "Poverty is an invention of civilisation," n103 and it is on the latter that its eradication will depend. Studies on the phenomenon of poverty are very interesting in [\*853] this respect, because they show that at a given moment in the development of a society, poverty always calls for collective action (and not individual acts of charity). No sooner are substantial amounts of property constituted that give rise to inequalities and merciless confrontation between the rich and the poor, do "asymmetrical dependencies" appear as the most frequent result. n104 The possible defaults and dysfunctions of welfare-inducing law should not mask political deferral and inaction at the domestic and international levels, or the fact that international law has always been used in a profoundly ambiguous way: as a positive model of inclusion and simultaneously as a negative model of exclusion, as a positive model of cooperation yet also as a negative model of domination. The somewhat paradoxical yet inescapable fact is that welfare-inducing law is, as we have seen, easier to instrumentalize than strictly liberal law aimed at regulating conduct, and is thus, ironically, less social and more unjust. It can be used to accelerate necessary corrections to gaping inequalities between nations or between individuals, but can also enable superpowers and economic operators to increase their revenue and importance. Furthermore, it can be conveniently denounced by the most virulent dictatorships in underdeveloped countries on the basis that it is inefficient. It can also be used as a means of obtaining international aid, despite the fact that the sharp rise in poverty and famine over recent years has actually been due to negligence, blind collectivism, terror, or civil war. n105¶ Here, legal interventionist and welfare-orientated discourse can be a vector of domestic or international domination, much like a powerful lever of transformation. It should also be noted that strictly legal discourse will not tell us why things are as they are and which might be the best way to change them. That is not its role, and it is therefore not a problem if law does not trump other types of discourse. Law has, however, become so entrenched in international society that the latter can no longer be conceptualized independently of it. Although it has undoubtedly always been an instrument of international social and political action, law has never played as important a role as it does today. International legal problems are no longer external problems one can simply resolve by calling international State conferences; they have become internalized by all societies, and we are gradually losing our ability to distance ourselves from them, and indeed from law itself. Yet distinguishing roles and finalities is all the more difficult when law is not in [\*854] itself capable of effectuating change and remains dependent on politics and adaptation.¶ The debate on the ability of politics to bring about change on an international level is as old as international society itself, and its current prevalence indicates its re-emergence. Although many analysts have taken neo-realist, neo-institutionalist, neo-functionalist, globalizationist, or transnationalist positions on this issue, n106 the present trend emphasises that the scope for manoeuvre of "real international politics" is limited due to the rise in bureaucracy, corporate interest groups, legalism in international relations, transnational networks of private actors, the incapacities of fragile States, etc., as if there existed within a decentralized society (which, however, has never been centralized and thus cannot be decentralized) a sort of political center-point providing a measure of the effectiveness or legitimacy of international political action, n107 when in reality the concepts most often evoked - namely collective State action, "international regimes," or global governance n108 - actually only recentralize politics in different manners. n109 Should we perhaps nuance the idea of an international political "center" or "system," either pessimistically by reference to a new Middle Age, n110 or more optimistically by emphasizing the importance of the individual's new role as an international actor, n111 the emergence of networks, or of orderly pluralism, n112 in order to enlarge our perspective on politics and better understand it? In fact, the increasing relevance of international law is not putting limitations on power, but bringing about a reorganization of power. The impression of reduced political leeway is thus deceptive, since in fact, new political powers are emerging that involve decisions affecting people and their environment. The sensation of political powerlessness or of simulacrum derives from [\*855] the fact that politics are reduced to the activities carried out within the official international political system. n113¶ However, whatever is the actual scale of these illusions and developments, they have instilled a sense of unease in internationalist culture, which is necessarily political as well as legal given the indissoluble links between the two. This is the result of the latent but visible state of disequilibrium between the official appearance of the classical center-points of political power - States, international organizations, etc. - where official activities appear efficient and regulatory, but often fall short of attaining the fixed objectives, and an international society that is inexorably straying from official political decisions and introducing new actors with new objectives, decision-making competencies, and political dimensions. That is not to say that States and international organizations are not the prime institutional actors on the international scene, but simply that behind the unchanged facade of the politics they engage in, new political centre-points are taking shape. Consequently, the boundary between the political and the non-political is becoming ever more indeterminate, just as the boundary between the legal and the non-legal. To paraphrase Prosper Weil, one can say that politics, much as the law, have become "diluted." The categories of the political and the non-political, as well as those of the legal and non-legal, must be re-conceptualized with a view to redefining political priorities and redefining them collectively, to the extent that this is possible. How can welfare-inducing law prevail without a strong and interventionist political center-point to ensure its application as the European States did in the post-war period from the fifties to seventies? How can one reconcile the changes in the law and international politics? Is not what initially seemed paradoxical but explicable becoming completely contradictory?¶ In any case, there is little point in pinning all our hopes on politics. Welfare does not seem to be induced by politics, by the law or by the State, although we have not altogether reached a dead point. n114 International politics does not define man's happiness, but rather it regulates the conduct of domestic and international actors, combats misery, and prevents risks.

## AT: Topicality

### AT: Positive Rights AFF

#### I meet – The aff defends a positive right. We give individuals the right to counsel and the ability to have an attorney. There’s no interpretation of the aff that could coherently defend

#### ALL RIGHTS ARE POSITIVE RIGHTS

**Holmes and Sunstein 2k** [Holmes, Stephen (Professor of Law at New York University), and Cass R. Sunstein (founder and director of the Program on Behavioral Economics and Public Policy at Harvard Law School). The cost of rights: why liberty depends on taxes. WW Norton & Company, 2000.]

"Where there is a right, there is a remedy" is a classical legal maxim. Individuals enjoy rights, in a legal as opposed to a moral sense, only if the wrongs they suffer are fairly and predictably redressed by their government. This simple point goes a long way toward disclosing the inadequacy of the negative rights/positive rights distinction. What it shows is that all legally enforced rights are necessarily positive rights. Rights are costly because remedies are costly. Enforcement is expensive, especially uniform and fair enforcement; and legal rights are hollow to the extent that they remain unenforced. Formulated differently, almost **every right implies a correlative duty, and duties are taken seriously only when dereliction is punished by the public power drawing on the public purse. There are no legally enforceable rights in the absence of legally enforceable duties,** which is why law can be permissive only by being simultaneously obligatory. That is to say, personal liberty cannot be secured merely by limiting government interference with freedom of action and association. No right is simply a right to be left alone by public officials. **All rights are claims to an affirmative governmental response**. All rights, descriptively speaking, amount to entitlements defined and safeguarded by law. A cease-and-desist order handed down by a judge whose injunctions are regularly obeyed is a good example of government "intrusion" for the sake of individual liberty. But government is involved at an even more fundamental level when legislatures and courts define the rights that such judges protect. Every thou-shalt-not, to whomever it is addressed, implies both an affirmative grant of right by the state and a legitimate request for assistance addressed to an agent of the state. **If rights were merely immunities from public interference, the highest virtue of government** (so far as the exercise of rights was concerned) **would be paralysis** or disability. **But** a disabled state **cannot protect personal liberties, even those that seem** wholly "**negative,**" such as the right against being tortured by police officers and prison guards. A state that cannot arrange prompt visits to jails and prisons by taxpayer-salaried doctors, prepared to submit credible evidence at trial, cannot effectively protect the incarcerated against tortures and beatings. All rights are costly because all rights presuppose taxpayer funding of effective supervisory machinery for monitoring and enforcement. The most familiar government monitors of wrongs and enforcers of rights are the courts themselves. Indeed, the notion that rights are basically "walls against the state" often rests upon the confused belief that the judiciary is not a branch of government at all, that judges (who exercise jurisdiction over police-officers, executive agencies, legislatures, and other judges) are not civil servants living off government salaries. But American courts are "ordained and established" by government; they are part and parcel of the state. Judicial accessibility and openness to appeal are crowning achievements of liberal state-building. And their operating expenses are paid by tax revenues funneled successfully to the court and its officers; the judiciary on its own is helpless to extract those revenues. Federal judges in the United States have lifetime tenure, and they are quite free from the supervisory authority of the public prosecutor. But no well-functioning judiciary is financially independent. No court system can operate in a budgetary vacuum. No court can function without receiving regular injections of taxpayers' dollars to finance its efforts to discipline public or private violators of rights, and when those dollars are not forthcoming, rights cannot be vindicated. To the extent that rights enforcement depends upon judicial vigilance, rights cost, at a minimum, whatever it costs to recruit, train, supply, pay, and (in turn) monitor the judicial custodians of our basic rights. When the holder of a legal right is wronged, he may usually petition a taxpayer-salaried judge for relief. To obtain a remedy, which is a form of government action, the wronged party exercises his right to use the publicly financed system of litigation, which must be kept readily available for this purpose. **To have a right**, it has been said, **is always to be a potential plaintiff** or appellant. Rights can be retrenched, as a consequence, by making it harder for complainants to seek vindication before a judge. One way to do this is to deprive courts of their operating funds. **To claim a right** successfully, by contrast, **is to set in motion the** coercive and **corrective machinery of public authority**. This machinery is expensive to operate, **and the taxpayer must defray the costs**. That is one of the senses in which even apparently **negative rights are**, in actuality, **state-provided benefits**.

### AT: Right to Housing

#### I meet – The affirmative defends granting access to housing by granting attorneys. We simply defend an enforcement mechanism.

#### First CounterInterp – The affirmative can only defend this aff. Solves all the limits offense.

#### Second CounterInterp – The affirmative does not need to defend the right to housing principle as the creation of increased access to housing.

#### 1. Grammar: The verb in the resolution is guarantee which means the term of art “right to housing” alone is irrelevant. Rather, the debate should focus around guaranteeing the right to housing. That’s the verb in the resolution which means the topic core controversy is revolved around how we guarantee the right to housing. The aff defends an enforcement mechanism in how we are able to provide the right to housing.

#### This controls the internal link into field context. Even if you define the term of art “right to housing,” your interpretation is not mutually exclusive with mine. We simply define what to do with the term of art i.e. the resolution says we must guarantee the term of art – right to housing.

#### Extend Davis 14 – The evidence is great on this issue. Davis explains to why securing the right to counsel in civil cases is absolutely key to protecting the right to housing which means this comes as a prior question. This controls the internal link into topic literature and field context because this evidence defines what it means to have the right to housing in the first place.

## AT: T Housing = Building Houses

### Generic

#### First CounterInterp – The affirmative can only defend this aff. Solves all the limits offense.

#### Second CounterInterp – The affirmative does not have to defend the construction of houses if we a) defend a positive right b) defend a policy of enforcement with a qualified solvency advocate c) the plan is inherent.

#### The right to housing does not entail the building of houses – only the obligation of the state. The plan is key to both neg disads and mechanism education.

**Morais 05** [Lochner Marais (PhD, University of the Free State, Bloemfonte Professor) in Social Policy) & Johannes Wessels, Housing Standards and Housing Rights: The Case of Welkom in the Free State Province, 16 URB. F. 17, 20 (2005)]

In general, it seems as if **the right to housing does not mean that governments are supposed to construct houses for the entire population** (Leckie, 1990; Kok and Gelderblom, 1994). Rather, **it is more concerned with the obligation of the state not to act in a way that will undermine the opportunity of households to gain access to housing**. For example, making laws or regulations that undermine access to housing will not be conducive to the furtherance of the right to housing. In terms of established informal settlements, **the right to housing would probably have the implication that one may not remove informal settlers without providing alternative accommodation** and without meeting all of the legal requirements. Furthermore, **it probably also requires the state to develop an implementation plan as to how it will ensure that this right** is upheld.

#### My interp is not part of the topic, it is the topic. Means no abuse on my part and is terminal defense to all their offense. Even if it might not give them ideal ground, that just means that it’s a shitty topic, not that I was abusive.

#### Not even the UN could coherently demand your interp.

**Adams 08**, Kristen David (Professor of Law, Stetson University College of Law). "Do we need a right to housing." Nev. LJ 9 (2008): 275.

Even so, **a right to housing does not** always **require** the kind of comprehensive **security of tenure one might assume**. For example, and despite the fact that it establishes a right to housing, **the U**nited **N**ations’ Covenant on Economic, Social, and Cultural Rights **does not** necessarily **require that** signatory **states provide housing** immediately, provide it to all persons, or provide it **free of charge**.121 Along similar lines, Barry Goodchild has interpreted the right to housing in France, in practice, as a “possibility” of housing rather than a “necessity” for governmental provision.

**T rule k2 any substantive engagement- outweighs all your offense.**

**Nebel 15** Jake “The Priority of Resolutional Semantics” vbriefly February 20th 2015 <http://vbriefly.com/2015/02/20/the-priority-of-resolutional-semantics-by-jake-nebel/>

**It would be better if everyone debated the resolution as worded**, whatever it is, than if everyone debated whatever subtle variation on the resolution they favored. **Affirmatives would unfairly abuse** (and have already abused) **the entitlement to choose their own unpredictable adventure**, and **negatives would respond** (and have already responded) **with strategies that are designed to avoid clash**—including an essentially vigilantist approach to topicality in which debaters enforce their own pet resolutions on an arbitrary, round-by-round basis. Think here of the utilitarian case for internalizing rules against lying, murder, and other intuitively wrong acts. As the great utilitarian Henry Sidgwick argued, **wellbeing is maximized not by**everyone doing what they think maximizes wellbeing, but rather (in general) by people **sticking to the rules** of common sense morality. **Otherwise, people are more likely to act on mistaken** utility **calculations** and engage in self-serving violations of useful rules, thereby undermining social practices that promote wellbeing in the long run. **That is exactly what happens if we reject the topicality rule in favor of direct appeals to pragmatic considerations**.

#### Use reasonability on T with a brightline of the aff author talking about a right to housing and cards in the literature. You still have link and impact turn ground and generics check which means you could have engaged, I’m in the direction of the topic. Key to substantive education because there’s less unnecessary theory which trades off with topical debate. It’s not arbitrary since I have a justified brightline.

### A2 Hartman Definition

#### My evidence outweighs- it’s actually specific to how the right to housing is used and understood.

#### Hartman is terrible- just somebody listing things that could be in the right to housing, no reason it’s a comprehensive definition

### AT Ground

#### Positive right solves abuse- you still have generic disads like politics, court clog, cap, or econ since the plan uses spending.

#### Solvency advocate means no abuse- you can cut cards in the lit- someone argues it

#### Inherency solves all the abuse- there’s a reason there’s no right to counsel in civil suits - someone likes them- cut the legal justifications for this - the fact that the Supreme Court has supported the new for over 230 years means you probably have amazing ground.

### AT Limits

#### NUQ- lots of ways to build limits, there’s no brightline.

#### Turn- you get PICs and advantage CP’s in a world where I have to defend such a large policy, which moots your offense since you have to prep large limits anyways.

#### Limits standards are bad. They discourage creativity and critical thinking by making us stick to prep instead of thinking outside the box.

### AT PM

#### My definitions turn this- no implementation of the RTH would ever take place through the neg definition.

#### Turn- right to attorneys is probably amazing policy debate since it’s about a very controversial issue which means we can debate more policies.